United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT
AND
JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,199

282

JAMES J. LAUGHLIN,

Appellant,

v.

H. CLAY ESPEY,

Appellee.

Appeal from a Judgment of the United States District Court
for the District of Columbia

JAMES J. LAUGHLIN
National Press Building
Washington, D. C.
Attorney Pro Se

STATEMENT OF QUESTIONS PRESENTED

I. Did the trial judge commit reversible error in holding that the actions of appellee outlined in Count I were absolute privilege?

II. Did the trial judge commit reversible error that the conduct outlined in Court II of the Complaint was absolute privilege?

III. Did not the trial judge commit reversible error in staying the deposition of the appellee in the absence of the appellant and without affording the appellant the opportunity to be heard.

INDEX

TABLE OF AUTHORITIES

* Cases or authorities chiefly relied upon are marked by asterick.

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The appellant filed a complaint against the appellee alleging libel and malicious prosecution. On the 1st of June, 1962, the District Court signed an order dismissing the complaint on the grounds of absolute privilege. Notice of appeal was timely filed. This being a final judgment of the United States District Court for the District of Columbia Circuit, jurisdiction is vested in this Court to review same under Title 28, S. 1291.

STATEMENT OF THE CASE

The appellant, an attorney at law, filed a complaint on March 16, 1962, against the appellee alleging that the appellee had falsely and maliciously libeled the appellant and set forth in Count II a cause of action against the appellee for malicious prosecution (J. A. 1-4). The gravamen of the complaint alleged that the appellee falsely and maliciously mailed a communication to Mr. Harry M. Hull, Clerk of the United States District Court, with an enclosure, Exhibit "B" (J. A. 9-15).

The said appellee after requesting disciplinary action be instituted against appellant, charged appellant with improper and unethical conduct and also charged the appellant with a felony; to wit: the violation of a blackmail statute (J. S. 2, J. A. 10).

The appellant's complaint set forth that the appellee in transmitting this scurrilous, false and libelous document to Mr. Harry M. Hull, Clerk of the U. S. District Court (J. A. 8) to the attention of the Committee on Admissions and Grievances, Ralph A. Curtin, Secretary, established that the appellee, a lawyer, was well aware of the local rules of practice having application to disciplinary proceedings with respect to attorneys and that he was aware of the fact that complaints properly filed with the Committee on Admissions and Grievances receive no publication until they are sifted, a hearing conducted and that body determines whether a complaint shall be filed and exhibited to Mr. Harry M. Hull, Clerk, and his employees in the Clerk's Office in the U.S. District Court (J. A. 2).

The complaint set forth that the appellee well knowing that his charges were false and malicious, desiring to give publication to his false accusations caused this document, marked Exhibit "B", (J.A. 9-15) to be mailed to Mr. Harry M. Hull, Clerk, where it of necessity would receive additional publication within the employees of the Clerk's Office before it reached its proper forum having jurisdiction of the matter, namely the Secretary of the Committee on Admissions and Grievances (J.A. 2). The complaint also set forth that a further libel was committed by appellee in that the libelous document sued upon (J.A. 9-15) set forth that the appellee had also written substantially the same matter; to wit: that the appellant had committed the crime of blackmail and was guilty of improper and unethical conduct addressed to David C. Acheson, United States Attorney in and for the District of Columbia, and asking him what actions he was going to take on the matter (J.A. 3). The appellee's actions were prompted by a letter he had received from the appellant (J.A. 16-17) seeking to collect $25.00 pursuant to this Court's mandate in 16,292, a copy of which was addressed to Mr. William E. Stewart, Jr., the present attorney of the appellee.

The second count of appellant's complaint was for malicious prosecution alleging that the appellee Espey maliciously prepared and caused to be filed false charges which requested that appellant be subjected to disciplinary proceedings and that these disciplinary proceedings were summarily resolved in the appellant's favor (J.A. 3).

The complaint which appellee caused to be filed and which contained the false charges directed against the appellant concluded with this statement:

> "I request the Court to take appropriate disciplinary action against Attorney at Law James J. Laughlin, located in the National Press Building, 14th and F Streets, N. W., Washington, D.C.
>
> Respectfully submitted,
>
> H. Clay Espey
> 219 Southern Building."

The complaint also alleged, as stated above, that the Committee on Admissions and Grievances summarily adjudicated appellee's complaint in the appellant's favor (J.A. 3). After the filing of appellant's civil complaint, appellant filed a notice to take the deposition of appellee on March 29, 1962, and filed amended notice on March 31, 1962 (J.A. 4-6). Appellee acting in proper person filed a motion to dismiss the complaint supported by an affidavit alleging that all his tortious conduct was absolute privileged (J.A. 6-8). The appellee also in proper person filed a motion to stay the taking of his deposition (J.A. 19-20). The appellee again acting in proper person served a notice on the appellant on April 7, 1962, that he would appear at District Court at 10 o'clock, a.m. on Tuesday, April 10, 1962. Appellant appeared at 10 a.m., the appellee was not present and later in the morning without the presence of appellant, the appellee ex parte obtained an order staying the taking of his deposition (J.A. 26).

The matter came on for hearing on the appellee's motion to dismiss before Judge Hart on May 31, 1962, and at this time the appellee was formally represented by Mr. Stewart (J.A.26). The appellee argued that all his communications to David C. Acheson, United States Attorney, which may have been libelous to the appellant were absolutely privileged (J.A.27). The appellee further argued that the transmittal of the libelous document sued upon both the libel count and the malicious prosectuion count were also absolutely privileged and the fact that it was mailed to Harry Hull of the District Court rather than to Mr. Curtin in the Committee on Admissions and Grievances was of no consequence and had no bearing on the question of the privileged character of the communication (J.A.27). The appellant argued to the Court that initially there was no privilege because the documents were filed in an inappropriate forum not having jurisdiction of the matter, or, in the alternative, that a conditional privilege would be the most that such conduct would be shrouded with. To these arguments, the Court asked appellant to consider "the source" and expressed the view that "Mr. Hull's office has got too much to do to stop and read this kind of tripe." (J.A.30). The appellant argued that the communication to David C. Acheson was only qualifiedly privileged and that the lodging of the grievance complaint in an inappropriate forum; to wit: Mr. Hull's office, deprived the appellant of any privilege he might ordinarily have had if the document had been properly filed with the Committee on Admissions and Grievances who have sole jurisdiction to initially review such complaint (J.A.31-33).

To this argument the Court responded:

> "If one lawyer makes outrageous allegations against another, and from reading this file, it looks to me like outrageous allegations were made against you, the Grievance Committee can handle that." (J. A. 33)

The Court then asked appellant if he could show that there was any publication of the scurrilous charge made by the appellee above and beyond the U. S. Attorney David C. Acheson and Mr. Hull, and the employees of the Clerk's Office (J. A. 35). Appellant responded that he had hoped to try to establish additional publication through the deposition he had noted of the appellee, H. Clay Espey, which had been stayed by the ex parte order obtained by appellee in proper person (J. A. 35). The Court then stated that he believed an absolute privilege should attach to all the conduct outlined in the appellant's complaint for damages and stated with respect to the appellee's conduct:

> "If they are going to be stopped, I think they ought to be stopped by the Committee on Admissions and Grievances." (J. A. 34).

The Court accordingly signed an order dismissing the complaint (J. A. 36).

Notice of appeal was timely filed. This appeal follows.

STATUTES AND RULES INVOLVED

Rule 79 of the Rules of Federal Civil Procedure -- Books and Records Kept by the Clerk and Entries Therein.

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments and Orders. The clerk shall keep in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment and appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; Calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the Clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

Rule 6 of the Rules of Federal Civil Procedure -- Time.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified

time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 25, 50(b), 52(b), 59(b), (d) and (e), 60(b), and 73(a) and (g), except to the extent and under the conditions stated in them.

Rule 94 of the Rules of the United States District Court for the District of Columbia -- Disbarment; Suspension; Censure.

(a) Complaint; Committee on Admissions and Grievances. Any person, seeking to charge a member of the Bar of this Court for any cause or offense which may justify disbarment, suspension, censure, or other disciplinary action, shall do so in writing subscribed and under oath. The complaint shall be filed with, or referred to, the Committee on Admissions and Grievances provided for in Rule 93. The Committee shall also have power without any formal complaint to inquire into all cases of misconduct of members of the Bar.

(b) Complaint, by Court or Judge. Any Court or a Judge therof, in the District of Columbia may refer to the Committee the name of any member of the Bar on a complaint that such member has conducted himself in an unprofessional, unethical or improper manner in a proceeding had in that Court, whereupon the Committee shall investigate the complaint, and should the matter be one which the Committee believes should be presented to the Court, it shall then proceed against the respondent as provided herein.

(c) Investigation; Notice; Answer. The Committee shall investigate the complaint, and, if in its opinion an answer should be made thereto, it shall serve, by registered mail a copy thereof on the member of the Bar complained of and as respondent thereto, the member shall file an answer with the Committee, subscribed and under oath, on or before twenty days after the date of mailing.

(d) Committee, Powers of: Hearing of Complaints. The Committee, or a section thereof, may sit as a Committee of Inquiry; and upon reasonable notice to the Complainant and respondent, may hold hearings before it on the issues made. The Chairman of the Committee, or of the Sub-Committee conducting the inquiry, is hereby designated and appointed a Master with authority to cause subpoenas to be issued commanding the attendance of witnesses at any hearing and, also, with authority to administer oaths to the parties and witnesses. Should any witness fail or refuse to attend or to testify under oath, his name may be certified to the Court, whereupon the Court may order contempt proceedings against such witness, so refusing, and administer such punishment as may be appropriate.

(e) Charges, Trial of; Punishment; Injunction. Should the Committee, after investigation, so decide, it shall prepare charges and submit them to the Court. If the Court orders the charges to be filed the Clerk shall file them and forthwith issue a summons directed to the respondent commanding him to answer. The summons and a copy of the charges shall be served by the Marshall, except as hereinafter provided. The respondent shall answer the charges within twenty (20) days from the date of service upon him; otherwise, the charges may be taken as confessed, and hearing had thereon ex parte at a time fixed by the Court.

(h) Committee to Prosecute. The Committee shall present and prosecute the charges and prepare and present all orders and judgments as directed by the Court.

STATEMENT OF POINTS

I. The transmittal of a libelous document by the appellee ostensibly addressed to the attention of the Grievance Committee and lodged in an inappropriate forum, to wit: the Clerk's Office of the District Court, was not clothed with conditional and certainly not with absolute privilege as decided by the trial judge.

II. A malicious prosecution suit will lie against an individual who with express malice files a complaint with a Grievance Committee seeking to discipline an attorney after there has been successful determination of the complaint in the attorney's favor.

III. The trial judge committed prejudicial error and violated Local Rule 6(d) in signing an order staying the deposition of the appellee when the appellant was not present and could not be heard.

SUMMARY OF ARGUMENT

I. The Count I of the complaint stated a cause of action for libel and under Hager v. Hanover Fire Insurance Company, 64 Fed Sup 949, neither absolute privilege nor even qualified privilege attaches to the actions of the appellee when he lodged and gave publication to scurrilous and libelous matter, published same in an inappropriate forum having no jurisdiction of the matter, to wit: the Clerk's Office of the United States

District Court of the District of Columbia. Under the authority of Sowder v. Nolan, 125 Atl 2d, 52, appellee did not avail himself of the proper forum and the proper means of filing said complaint and hence he was not entitled to the sanctuary of absolute privilege. Further error was committed in holding that the appellee's unlawful and libelous conduct in publishing the identical false charges to Mr. Acheson thus giving further publication of these charges directed to Mr. Acheson to the officials in the Clerk's Office of the District Court were absolutely privileged.

II. The decision of the Court in Laughlin v. Garnett, 138 Fed 2d 931, and the dissenting language in Toff v. Ketcham, 113 Atl 2d 671, 52 ALR 2d 1208, clearly show that insofar as the District of Columbia is concerned, assuming a grievance complaint is properly filed, the person filing same is only clothed with a qualified privilege when a malicious prosecution suit is filed alleging falsity and malice and successful determination of the charges.

III. The trial judge committed error in staying the deposition of appellee when the appellee appeared at a time other than that specified in his notice and when the records show that he was in flagrant violation of Rule 6(b) of the Rules of Federal Civil Procedure.

ARGUMENT

I. THE COURT COMMITTED REVERSIBLE ERROR UNDER THE APPLICABLE LAW IN THE DISTRICT OF COLUMBIA IN HOLDING THAT ALL THE TORTIOUS CONDUCT OUTLINED IN THE APPELLANT'S COMPLAINT WERE CLOTHED WITH ABSOLUTE PRIVILEGE AND THAT THE ONLY REMEDY AGAINST SUCH ACTION WAS THE COMMITTEE ON ADMISSIONS AND GRIEVANCES.

For the sake of clarity, we will first address ourselves to the complaint for libel outlined in Count I and the correctness of the trial judge's ruling that said libels were absolutely privileges. The libels are contained in Exhibit "B" (J.A. 9-15) which the appellee maliciously transmitted to Harry M. Hull, Clerk of the United States District Court (J.A. 8-15). The complaint sets forth that the libelous matter contained within this document showed on its face that the appellee knew of the existence of the Committee on Admissions and Grievances and of the existence of the Secretary, Mr. Curtin, for indeed on the complaint itself (J.A. 9) on the right-hand side it was to the attention of the Committee on Admissions and Grievances, Ralph A. Curtis, Esq., Secretary. A brief and cursory reading of this scurrilous document shows that the appellee charged the appellant with "illegal conduct in violation of Section 22-2305, blackmail under District Code 1951 and 1961"[1/] and then further

1/ The charge of blackmail and unethical conduct is a frequent epithet appellee directs at fellow members of the Bar. See Golden Commissary v. Shipley, No. 15,579.

charged appellant with "improper and unethical conduct." This document transmitted by the appellee which was the basis of appellant's complaint also set forth that the appellee had transmitted to David C. Acheson, United States Attorney for the District of Columbia, substantially the same matter charging the appellant with blackmail and asking that criminal proceedings be instituted (J.A. 9-10). The complaint also contained a great deal of confused, persecutory and paranoid thought material alleging in substance that the appellant and two other attorneys were engaged in a conspiracy to "scare" the appellee off from prosecuting certain claims. The appellee refers to the conspiracy to "scare him off" appearing at J.A. 11, 12, 14 and 15.[2/] We suggest to the Court that to allow any type of privilege to the appellee who transmitted the libelous document to an improper forum is not only to violate the pronouncements and rulings of law as stated in Hager v. Hanover Fire Insurance Company 64 Fed Sup 949, but is also to render nugatory and useless the provisions of Local Rule 94(a), (b), (c), (d), (e) and (h).

2/ The conduct as set forth in the complaint and the reference to the conspiracy to "scare" the appellee off undoubtedly must be treated sympatheticly particularly in view of the thoughtful and comprehensive article written by George Neff Stevens, Dean of the School of Law, University of Washington, in the February, 1962, edition of the American Bar Association JOURNAL, pages 140-143. It would still appear, however, the victim is entitled to redress and in this case the only substantial redress which will act as a deterrent against repetitious conduct is to allow a civil complaint to proceed and not to shroud such conduct in absolute privilege, a doctrine not favored and extended by the Courts.

These rules not only protect the public but serve to protect a lawyer from an indiscriminate attack prior to some form of evaluation by the Committee on Admissions and Grievances. In the Hager v. Hanover Fire Insurance Company case, supra., the Court specifically held that pleadings which ordinarily would be absolutely privileged because of possible relevancy to the proceedings were lost and unavailable to the defendant where the pleadings are filed in a Court not having jurisdiction of the cause. In the Hanover case the Court said:

> "Defendants in the instant action allege in their answer that the libel charge against them herein is absolutely privileged because it was made in an action pending in a Court of competent jurisdiction, and if not absolutely privileged, it is qualifiedly so for the reason it was made in a judicial proceeding in which it was necessary for them to preserve their right of review of the action of a Court dismissing a course of action instituted by them in good faith."

The Court after holding that the damages sought did not confer the necessary jurisdiction on the Federal Court stated:

> "We conclude that the Court did not have jurisdiction of the subject matter of the two policies of insurance, of a face value less than the requisite Federal jurisdictional sum. * * * Therefore, the defense of absolute privilege is not available to defendants in this action."

We also call the Court's attention to a case of Sowder v. Nolan, 125 Atl 2d 52, which deals with the filing of scurrilous and libelous letters in an inappropriate forum and not according to the procedure outlined by the District of Columbia Code. In that case in holding that there

was no absolute privilege, the Court stated:

> "Appellant makes three assignments of error. First of these is that the letters were privileged absolutely and that, therefore, the trial court's denial of a motion for directed verdict was error. The letters purportedly to be written in response to public statements and newspaper publicity concerning top-level efforts within the Police Department to eliminate certain alleged corrupt influences from its ranks. * * * Appellant claims that if investigated and found to be true these letters might have become the basis for the preferment of written charges against the appellee by the Police Trial Board. Authorized by our Code 1951, S4-121 and 122, the Board's function is to take the proper disciplinary action for dereliction against members of the Metropolitan Police Force. As this possibly would be quaisi-judicial in appellant's view, he would have us attach the same absolute privilege to these letters as that accorded pleadings and affidavits relevant to a case in which they are filed according to law.
>
> "Appellant's course to the sanctuary of absolute immunity is charted tenously. The letters could not of themselves initiate a trial board proceeding. The police tribunal could not assume jurisdiction until 'written charges were preferred against (the appellee) in the name of the major and superintendent of said force or upon some complaint of persons other than members of the department which may be referred * * * by the Commissioner or the Chief of Police.' The letters were not 'some complaints' and the mere possibility that a quaisi-judicial might conceivable take jurisdiction of their subject matter after some further action thereon by an entirely independent agency over which the authority had no control should not de facto to cause an absolute privilege to attach to them. In fact, no such proceedings did or could begin since charges incorporating these letters were not lodged by the

superintendent of police and the letters alone had no power to cause the police tribunal to convene. Indeed, the letters themselves do not invoke such action. Under this analysis, the letters could not be deemed to have been filed according to law. Our code gives access to a special police trial board proceeding to persons such as appellant, [1] but this avenue was not pursued by the police trial and review board.

"1/ D. C. Code 1951, Sup. 4, Title 1, Administrative App. Reorganization Order #48."

It was urged by the appellee below that the provision of Local Rule 94(a) of the Local Rules of this Court allowed the procedure he adopted in this case. Rule 94(a) states:

"(a) Complaint; Committee on Admissions and Grievances. Any person, seeking to charge a member of the Bar of this Court for any cause of offense which may justify disbarment, suspension, censure, or other disciplinary action, shall do so in writing subscribed and under oath. The complaint shall be filed with, or referred to, the Committee on Admissions and Grievances provided for in Rule 93. The Committee shall also have power without any formal complaint to inquire into all cases of misconduct of members of the Bar."

The appellee's reliance upon the language "the complaint shall be filed with or referred to the Committee on Admissions or Grievances * * *" is misplaced. The Language of the Rule, "or referred to," specifically and patently refers to conduct occurring in open Court which the Court would refer to the Committee for evaluation in accordance with Rules 94(c) and (d). Rule 94(a) must be read in conjunction with Rule 94(b). Rule 94(a) can not be isolated from Rule 94(b), (c), (d), (e) and (h).

If the appellee's construction of this rule were correct, it would render meaningless and useless all the protection outlined and provided for in Rule 94(d). Indeed, it would open the sluice gates to the reprehensible type of conduct reflected in this cause and would, as so ably expressed by Judge Wachenfeld dissenting in Toff v. Ketcham, 113 Atl 2d 671, 52 ALR 2d 1208, make a mockery of the law. Judge Wachenfeld said:

> "Granting immunity will only serve to encourage the use of disciplinary proceeding as privileged sanctuary to carry on personal vendettas and excursions of ill will disassociated from the true facts in a cause. It will weaken, rather than strengthen, the disciplinary process and will make a mockery of equity and justice."

In analyzing the reasoning of the trial judge it can be seen that he recognized the statements as both libelous and outrageous by his following comments during the course of argument (J.A. 28);

> "THE COURT: Mr. Laughlin, let me ask you something. Your reputation hasn't been hurt one iota by these charges?
>
> * * * *
>
> "THE COURT: Not only that, but those that knew about it didn't pay the slightest attention to it."

And at J.A. 30:

> "THE COURT: Tell me, Mr. Laughlin, you have been at the Bar here a long time, don't you think it is time you mellowed and considered the source and forgot the whole cockeyed thing?"

When the Court did address himself to what redress the appellant had for these outrageous accusations including but not limited to the charge of blackmail against the appellant the Court responded (J.A. 33):

> "THE COURT: You know, the Grievance Committee can handle this thing easily. If one lawyer makes outrageous allegations against another, and from reading this file it looks to me like outrageous allegations were made against you, the Grievance Committee can handle that."

At J.A. 34, the Court stated:

> "THE COURT: I am not going to make any indication in this particular case but I will say that I think where one lawyer makes totally unsubstantiated allegations against another lawyer that the Admissions and Grievance Committee should take action on it. That is just generally true."

At J.A. 35, the Court stated:

> "THE COURT: You don't want to continue with this dirty business."

Of course, appellant does not labor the wisdom of avoiding litigation with the appellee and the fact that it is unwholesome, but the Court's philosophical pronouncement that the appellant should have mellowed and should ignore the "source" should be viewed in light of the fact that the trial court (up to this time) has not been a victim of the appellee's charges and has not been maligned in the manner in which appellant has been. We have briefly referred to the decision in Toff v. Ketcham, supra., and it should be clearly pointed out that this case while supporting the appellee's argument with respect to Count II has no bearing on the first count of the complaint which alleged an improper lodging of libelous

matter in an inappropriate forum which divested the appellee of any privilege that might ordinarily apply, see Hager v. Hanover Fire Insurance Company, supra.

The first count also alleged that in this inappropriate forum the appellee publicized libelous statements that he had made a complaint to the United States Attorney David C. Acheson with respect to the appellant's conduct and requested action from the United States Attorney on these complaints. While some authorities might argue for an absolute privilege in making a complaint to the United States Attorney's Office, we have additional and aggravating facts as set forth in this complaint. Not only was a complaint made to the United States Attorney but the appellee deliberately made this fact known and publicized in the Clerk's Office of the District Court which had no possible interest in such facts. In this connection, we call the Court's attention to the case of Holder v. Penetto, 223 N.Y.S. 2d, wherein in passing on this question the following was stated:

> "Here the moving defendant had no absolute privilege in making the complaint to the District Attorney, but rather a qualified privilege. Camel v. Cunningham Natural Gas Corp., 164 Misc., Page 1, 6-7, 298 NYS page 200 at 206; Robert v. Pratt, 174 Misc. 585, 21 NYS 2d 545, appeal dismissed, 286 NY 568, 35 NE 2d 922, certified denied 314 US, page 613, 62 Supr Ct. 112, 86 L. Ed. 463. The defense may be destroyed by proof of the mails of the person making the charge Loewinthan v. LeVine, 270 Appellate Division, page 512 60 NYS 2d 433; Teichner v. Bellan, 7 Appelate Div. 2d 247, 252, 181 NYS 2d 842. Hence the suit counter-claim and cross complaint may not be dismissed as insufficient on its face."

None of the material which the appellee transmitted to the clerk could receive a file number and be put on the docket in conformity with Rule 79(a) of the Rules of Federal Civil Procedure. Therefore, it is completely illogical and contrary to the law to shroud such outrageous conduct with an absolute privilege and to denominate the papers sued upon in this cause as being papers filed in a judicial proceeding. We, therefore, ask this Court in light of the authorities above to reverse the judgment of the Court below.

II. UNDER THE DECISION OF THIS COURT IN LAUGHLIN v. GARNETT, 138 Fed 2d 931, THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR IN DISMISSING COUNT II OF THE COMPLAINT.

For the purpose of this argument, we will assume the lodging of a grievance complaint against the appellant in the offices of the Clerk rather than with the Committee on Admissions and Grievances constituted a lawful filing. The complaint then set forth that the charges filed by the appellee were false and maliciously filed and that the charges were resolved favorably to the appellant. There was thus set forth all the essential elements of a malicious prosecution suit for damages. The case of Toff v. Ketcham, supra, reported at 113 Atl 2d 671, 52 ALR 2d 1208, would support the actions of the trial judge in dismissing the second count of the complaint. There is a divergence of authority as to whether the wilful filing of a grievance complaint against a lawyer should receive the sanctuary or absolute privilege. Since the doctrine of absolute privilege is not

favored by the Courts, we feel the dissenting opinion in Toff v. Ketcham supra., clearly states the law and suggest to this Court that the decision of the Court in Laughlin v. Garnett, supra., stated the law in accordance with the dissenting opinion in Toff v. Ketcham, supra., and held that malicious and false complaints addressed to a Bar association would not be absolutely privileged. In the Garnett case this Court said:

> "Certain paragraphs in this complaint allege that the appellees brought false charges against the appellant to the attention of the Bar Association in the District of Columbia. Such activities, while privileged, do not come within the scope of Cooper v. O'Connor and might be actionable if sufficient facts were alleged to show the character of the complaint and malice on the part of the appellant, Colpoys v. Gates, 118 Fed 2d 16."

In Toff v. Ketcham the Court overturned its earlier decision, in Stein v. Schmitz, 61 Atl 2d 260. The decision of the New Jersey Court was not binding on the District Court and indeed the decision of this Court in Laughlin v. Garnett clearly pointed the way that this Court was more in accord with the dissenting opinions in the Ketcham decision. In evaluating the public interest and the interest of the attorney, we call the Court's attention to the following language in the dissenting opinion by Judge Wachenfeld, the wisdom of which we feel is borne out by the present record. Judge Wachenfeld said:

> "An Attorney perhaps more than anyone else may suffer serious injury when false and malicious accusations of unprofessional conduct are lodged against him in the form of a complaint before a grievance committee.

"However, I cannot join the majority when it concludes that the public interest underlying the duty and functions of this court in disciplinary matters involving members of the legal profession makes it necessary to deny relief to an attorney for the wrong which he has suffered--relief which would ordinarily be available to any other member of the community in like circumstance.

"In support of this conclusion, the majority holds that to sustain the instant complaint would deter citizens from bringing charges of unprofessional conduct against attorneys, and in the interest of maintaining high standards and qualifications for membership in the bar, we must permit unfettered resort to grievance committees even by those who willfully, maliciously and falsely make a complaint.

* * * *

"I cannot understand how the filing of a knowingly false and malicious charge against an attorney before a grievance committee to advance private interests can be said to aid us in fulfilling our constitutional duty to maintain the high standards of the bar or to advance the public interest. To confer blanket immunity in such a situation will, in my opinion, have precisely the opposite effect. Those who have legitimate grievances against attorneys need no cloak of immunity as an inducement to file complaints with grievance committees. Granting immunity will serve only to encourage the use of disciplinary proceedings as privileged sanctuaries to carry on personal vendettas and excursions of ill will disassociated from the true facts in a cause. It will weaken, rather than strengthen, the disciplinary process and will make a mockery of equity and justice."

We also call the Court's attention to the annotation following the Ketcham decision, 52 ALR 2d 1208, at 1219, where the following is stated:

> "In other actions by attorneys to recover damages for malicious institution of disbarment proceedings against them, though unsuccessful, the right of an attorney to maintain such an action has not been questioned, it apparently being assumed by the parties, as well as by the Courts, that such a malicious act is actionable, provided the necessary elements of the cause of action are established. Green v. Elliot, 63 Fed 308; Mitchell v. Greenogle, 100 Fed 184; Fletcher v. Wheat, 160 Fed 432; Laughlin v. Garnett, 138 Fed 931."

In light of the argument above it was reversible error of the Court to dismiss Count II of the complaint.

III. THE TRIAL JUDGE COMMITTED PREJUDICIAL ERROR IN ENTERING AN ORDER STAYING THE DEPOSITION OF THE APPELLEE IN THE ABSENCE OF THE APPELLANT.

After the complaint was filed and while the appellee was representing himself, he filed a motion and served a copy on appellant on April 7, 1962, that he would appear at 10 a.m. on Tuesday, April 10, 1962, and ask for an order staying the taking of his deposition. The appellant appeared at 10 a.m. and the appellee was not present. The appellee at a different time, at approximately 11 a.m., went before Judge Hart and obtained an order staying the deposition and making representations in the absence of the appellant. The notice and the representations to the Court were in flagrant violation of Rule 6(d) of the Rules of Federal Civil Procedure which provide for five (5) days' notice. The Court should not have entertained the motion or signed the order without the appellant's

presence and without indicating in the order that for some particular good cause shown the presence of the appellant was not deemed necessary.

Due process requires notice and opportunity for hearing, and one of the vehicles for assuring notice is Rule 6(d) of the Rules of Federal Civil Procedure. In Mitchell v. Public Service Coordinated Transport, 13 FRD 96, the Court said:

> "The defendants, by oral motion at pretrial without notice of the court or their adversary, moved that the above action be dismissed on the ground that plaintiff has filed three suits involving the same accident, thus subjecting the defendants to undue harassment, embarrassment, and vexation.
>
> "The court does not approve of the practice of counsel bringing motions, without notice, at pre-trial conferences. Attention of counsel is called to Rule 6(d) of the Federal Rules of Civil Procedure 28 U.S.C., which requires that notice of the hearing of a motion shall be served not later than five days before the time specified for the hearing* * *."

Also in McLeod v. Union Barge Line Co., 11 FRD 167, the Court said:

> "The motion was not presented in open court but was brought by plaintiff's counsel to chambers and called to my attention by my law associate. This practice is improper and must be discouraged. In addition, compliance was not made with Rule 6(d) of the Federal Rules of Civil Procedure, 28 U.S.C.A., which provides, inter alia * * *."

The ex parte representations of the appellee are reflected in J.A. 37--39.

When the appellee in proper person and in the absence of the appellant brought his application to the Court's attention, the Court initially inquired as to where Mr. Laughlin was and then proceeded in the face of the appellee's disingenuous response concerning the certificate of service to adjudicate the matter precipating his ruling with the following remarks:

> "THE COURT: What kind of foolishness is this?
>
> "MR. ESPEY: I personally think it is completely erroneous and that I acted only within absolute legal privilege.
>
> * * * *
>
> "THE COURT: I will stay all depositions of the defendant until the hearing is had on the motion to dismiss. Present an order to that effect."

Of course, the Court was not maligned falsely and publicly by appellee and it is apparent that the Court, reflecting on the matter as evidenced by his remarks during the hearing on the motion to dismiss, showed the improvidence of his earlier statement by the manner in which he reproached the appellee for his conduct.

We feel that one of the vices in the administration of justice is ex parte applications. They not only destroy the fairness of a hearing but, what is probably just as important, the appearance of fairness.

In light of the above the action of the trial judge in staying the deposition without notice to the appellant was reversible error;

the cause should be reversed with appropriate directions allowing the appellant to take the deposition of the appellee who to date has excaped with immmunity from conduct which even the majority opinion in Toff v. Ketcham recognized should not go unnoticed.

CONCLUSION

In light of the points raised above, the trial judge was in error in holding that absolute privilege applied to Counts I and II of the complaint and committed reversible error in staying the deposition of the appellee without giving the appellant an opportunity to be heard. An attorney's reputation against malicious and false charges should be as zealously protected as the duty to discipline when warranted and we feel that in this case, while the Court condemned and deplored the improper and unethical actions of the appellee, all redress was denied the appellant. This is not in accord with ether justice or the duty upon the Court not only to administer justice but to protect the rights of attorneys who are maligned in this manner.

Respectfully submitted,

JAMES J. LAUGHLIN
National Press Building
Washington, D. C.
Attorney Pro Se

JOINT APPENDIX

INDEX FOR JOINT APPENDIX

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN National Press Building Washington, D. C., Plaintiff	:	[Filed March 16, 1962]
v.	:	Civil Action No. 882-'62
H. CLAY ESPEY 219 Southern Building 1425 H Street, N.W. Washington, D. C., Defendant	:	

COMPLAINT FOR LIBEL AND MALICIOUS PROSECUTION

The complaint of James J. Laughlin shows unto the Court the following:

1. He is a citizen of the United States, a resident of the District of Columbia and an attorney at law. Plaintiff is a member of the Bar of this Court, the United States Court of Appeals for the District of Columbia Circuit, the Supreme Court of the United States and the United States Court of Appeals for the Third, Fourth, Fifth, Eighth and Tenth Circuits, the United States District Court for the Southern District of Indiana, the United States District Court for the District of Maryland, the Court of Military Appeals, the Tax Court of the United States and the courts of Indiana where he is a legal resident.

2. Plaintiff says the defendant H. Clay Espey, insofar as he knows, is a citizen of the United States, a resident of the District of Columbia and is a practicing attorney and has been a member of the Bar of this Court and has engaged in legal work for more than twenty five (25) years.

3. The general jurisdiction of this Court is invoked.

4. Plaintiff says that the defendant has libeled him. Plaintiff says that on or about January 29, 1962, within the District of Columbia, the defendant

Espey contriving to injure, defame and degrade the plaintiff, did maliciously and with no cause whatsoever prepare and cause to be lodged with the Office of the Clerk of the United States District Court causing the same to be published, a written complaint charging plaintiff with "improper and unethical conduct, and also in illegal conduct in violation of Section 22-2305, Blackmail, D.C. Code, 1951 and 1961".

5. Plaintiff says that the defendant knew that his allegations were false and he well knew that the plaintiff had engaged in no improper, unethical or illegal conduct and that defendant's actions in this case were malicious and known to him to be malicious and wrongful.

6. Plaintiff says that the defendant, having had years of experience as a member of the Bar and thoroughly conversant with court procedure and being entirely familiar with the rules of practice promulgated by the United States District Court for the District of Columbia, well knew that a complaint charging improper or unethical conduct should be filed with the Committee of Admissions and Grievances constituted by the United States District Court for that purpose and that said complaints are to be given no publication until after the Committee on Admissions and Grievances conducts a hearing to determine whether the allegations are valid and whether the attorney in question should be called upon to answer. Although the defendant was well aware of this he contrived to give publication to his false, malicious and libelous allegations knowing full well there was no basis for his false charges and did cause his complaint to be mailed to Harry M. Hull, Clerk of the United States District Court for the District of Columbia. This, of course, gave publication to the complaint in that it had to pass through several hands in the Office of the Clerk of the United States District Court for the District of Columbia and after going through a number of hands, was later delivered to the proper office – that is to say, the Office of the Secretary of the Committee on Admissions and Grievances of the United States District Court for the District of Columbia on the Sixth Floor of the Courthouse Building.

7. Plaintiff says further that the defendant Espey, although an experienced practitioner and thoroughly conversant with the provisions of the District of Columbia Code and knowing full well that the plaintiff had committed no criminal

offense and had not violated Section 2305 of Title 22 of the D. C. Code, maliciously and wrongfully and with the intent to injure plaintiff, caused letters to be written to David C. Acheson, United States Attorney for the District of Columbia, accusing plaintiff of violating the Blackmail Statute - that is to say, Section 2305 of Title 22 of the District of Columbia Code.

WHEREFORE, as to Count I, plaintiff asks for actual damages in the amount of $50,000.00 and punitive damages in the amount of $50,000.00, or a total of $100,000.00 against the defendant H. Clay Espey.

Count II

1. The allegations as to jurisdiction, etc., referred to in Count I are incorporated herein by reference.

2. Plaintiff says that without any just cause whatsoever the defendant Espey maliciously and wrongfully caused a complaint to be filed with the Committee on Admissions and Grievances. The allegations were false and malicious and known by the defendant Espey to be false and malicious and the manner in which it was filed was contrary to established procedure as set forth in the Rules of the United States District Court for the District of Columbia, and said Rules were thoroughly familiar to the said defendant Espey in that he has been engaged in the practice of law for more than twenty five (25) years. The allegations in the complaint, as we have already stated, were false and the Committee on Admissions and Grievances did not even conduct a hearing but dismissed the complaint summarily.

3. Plaintiff says that the action of the defendant Espey in filing the charges alleging unehtical conduct against plaintiff was done by the defendant with malice, seeking to bring about disciplinary proceedings by the Committee of Admissions and Grievances through this Court against your plaintiff and that the Committee, as stated above, resolved the matter summarily in plaintiff's favor.

WHEREFORE, as to Count II plaintiff asks for actual damages in the amount of $50,000.00 and punitive damages in the amount of $50,000.00, or a

total of $100,000.00, against the defendant H. Clay Espey.

/s/ James J. Laughlin
James J. Laughlin
National Press Building
Washington 4, D. C.
Plaintiff in Proper Person

Plaintiff demands trial by jury.

/s/ James J. Laughlin
James J. Laughlin

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN, Plaintiff	:	[Filed March 29, 1962]
v.	:	Civil Action No. 882-'62
H. CLAY ESPEY, Defendant	:	

NOTICE OF DEPOSITION

To: H. Clay Espey, Esq.
219 Southern Building
1425 H Street, N.W.
Washington, D. C.

Please take notice that pursuant to Rule 26 of the Federal Rules of Civil Procedure plaintiff will proceed to take the deposition upon oral examination of H. Clay Espey, defendant herein, at 3:30 P.M. Tuesday, April 10, 1962, at the office of James J. Laughlin, 1119 National Press Building, Washington, D. C., before a Notary Public authorized by law to administer oaths. As the 21-day period will have expired by that date, you are required to be present at the time and place designated.

/s/ James J. Laughlin
James J. Laughlin

* * * *

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of March, 1962 mailed copy of the foregoing Notice of Deposition to H. Clay Espey, Esq., 219 Southern Building, 1425 H Street, N.W., Washington, D. C.

/s/ James J. Laughlin
James J. Laughlin

In The
UNITED STATES DISTRICT COURT
For The District Of Columbia

JAMES J. LAUGHLIN,
Plaintiff
v.
H. CLAY ESPEY,
Defendant

[Filed March 21, 1962]
Civil Action No. 882-'62

AMENDED NOTICE OF DEPOSITION

To: H. Clay Espey, Esq.
219 Southern Building
1425 H Street, N.W.
Washington, D. C.

Please take notice that pursuant to Rule 26 of the Federal Rules of Civil Procedure plaintiff will proceed to take the deposition upon oral examination of H. Clay Espey, defendant herein, at 3:30 P.M. Wednesday, April 18, 1962, at the office of James J. Laughlin, 1119 National Press Building, Washington, D. C., before a Notary Public authorized by law to administer oaths. As the 21-day period will have expired by that date, you are required to be present at the time and place designated.

You will bring with you copies of all letters you have written to Judges, Court personnel, Committee on Admissions and Grievances and any other officers, offices or agencies, and any and all other persons regarding litigation involving Albert J. Ahern, Jr., John K. Clifford and Wise & Midgett, Inc.

in which plaintiff's name was mentioned. You will also bring with you copies of your income tax returns for the last three years; also copies of your bank statements and your bank transactions for the last three years, and a list of all your real estate holdings and a list of all your investments, stocks, bonds, etc. and any and all other matters with regard to your finances.

/s/ James J. Laughlin
James J. Laughlin
National Press Building
Washington 4, D. C.
Plaintiff in Proper Person

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of April, 1962 mailed copy of the foregoing Amended Notice of Deposition to H. Clay Espey, Esq., defendant herein, at 219 Southern Building, 1425 H Street, N.W., Washington, D. C.

/s/ James J. Laughlin
James J. Laughlin

In The
UNITED STATES DISTRICT COURT
For The District Of Columbia

JAMES J. LAUGHLIN, Plaintiff,	:	
v.	:	Civil Action No. 882-'62
H. CLAY ESPEY, Defendant.	:	

DEFENDANT'S AFFIDAVIT SUPPORTING HIS MOTION TO DISMISS, ON PRIVILEGE

DISTRICT OF COLUMBIA, SS:

H. Clay Espey, being first duly sworn, according to law, deposed and said on his personal knowledge and that he is competent to testify to the matters stated herein, as follows:

1. He is the defendant in the above-entitled civil action.

2. All that defendant did in connection with plaintiff's alleged civil action and the allegations of plaintiff's complaint, filed herein on March 16, 1962, for the institution of this civil action, prior to such filing and institution, was and is as follows:

a. Under dates of May 15, 1961, and January 3, 1962, defendant communicated with United States Attorney David C. Acheson, the prosecuting attorney for the District of Columbia, as to which defendant claims his absolute legal privilege and immunity.

b. Defendant mailed on January 29, 1962, by first class mail, postage prepaid, a sealed envelope addressed to Harry M. Hull, Esq., Clerk, U.S. District Court for D.C., containing his letter of that date addressed to said Clerk, an exact copy of which is attached and made part hereof by this reference, marked Exhibit A.

c. Defendant likewise mailed in the same addressed and sealed envelope his verified complaint against Plaintiff James J. Laughlin, dated and sworn to January 29, 1962, an exact copy of which is attached and made part hereof by this reference, marked Exhibit B.

d. Defendant received by United States mail immediately after February 8, 1962, letter from Ralph A. Curtin, Esq., Secretary of the Committee on Admissions and Grievances, bearing date of February 8, 1962, an exact copy of which is attached and made part hereof by this reference, marked Exhibit C.

3. Defendant states that each statement of fact made by him in his said above-mentioned letter and complaint is correct and true, and denies that any statement of fact made by him in his said above-mentioned letter and complaint is false as plaintiff charges by unsworn allegations.

4. Defendant asserts that he acted within his absolute, legal privilege and immunity from civil action, and that his actions are not the basis of a valid cause of action against defendant on a claim upon which relief can be granted, and further asserts that his actions would not be the basis of a valid cause of action or claim upon which relief can be granted if he had made an incorrect

or mistaken statement in said communications, letter and complaint.

/s/ H. Clay Espey
H. Clay Espey, Defendant.

Subscribed and sworn to before me this 7th day of April, 1962.

/s/ Gertrude N. Lufo
Notary Public, District of Columbia

My Commission Expires: April 1, 1963

[Certificate of Service Omitted]

Exhibit A

H. CLAY ESPEY
Attorney and Counsellor at Law
Southern Building
Washington, D. C.
Telephone National 8-2145

January 29, 1962

Harry M. Hull, Esq.,
Clerk, U.S. District Court for D.C.,
United States Courthouse,
Washington 1, D. C.

Dear Sir:

Forwarded herewith are original and one copy of my verified complaint to the United States District Court for the District of Columbia, Attention: The Committee on Admission and Grievances, Ralph A. Curtin, Esq., Secretary, against Mr. James J. Laughlin, member of the Bar of your Court, which you are requested to route to the proper personnel of the Court.

Very truly yours,

/s/ H. Clay Espey
H. Clay Espey

---

219 Southern Building
1425 H Street, N.W.
Washington, D. C.,
January 29, 1962

Exhibit B

The United States District Court
for the District of Columbia,
United States Courthouse,
Washington 1, D. C.

Attention: The Committee on Admissions and Grievances, Ralph A. Curtin, Esq., Secretary.

Gentlemen:

This is my verified complaint against James J. Laughlin, a member of the Bar of the United States District Court for the District of Columbia, whom I believe and submit has engaged in improper and unethical conduct, and also in illegal conduct in violation of Section 22-2305, Blackmail, D.C. Code, 1951 and 1961, by sending me by United States Mail, postage prepaid, his letter bearing date of May 1, 1961, threatening me with civil litigation if I should continue litigation against Mr. Albert J. Ahern, Jr., and has subjected himself to appropriate disciplinary action. Thus far he has not taken his threatened action.

I desire to learn from your determination and action whether it is presently permissible or proper conduct for a lawyer to threaten another lawyer in writing with litigation to deter and scare the latter from his duty to his client. Mr. Laughlin's conduct, by his letter, is utterly foreign to my understanding of the ethical and legal authority and office of a member of the Bar.

Attached hereto as Exhibit A are copies of Mr. Laughlin's letter to me bearing date of May 1, 1961, and an envelope in which it was received, both received by me on May 2, 1961.

I wrote United States District Attorney David C. Acheson, under date of May 15, 1961, in great detail, reporting Mr. Laughlin's letter threatening me with civil suits and stating my beliefs that I have been and am being subjected to a campaign by Albert J. Ahern, Jr., and John Keely Clifford and their Attorney at Law James J. Laughlin to scare me off from pressing the claims of my client, Mrs. Eva F. Midgett, against Messrs. Ahern and Clifford, and

that Mr. Laughlin's written threat appears to me to be in violation of Section 22-2305. No receiving any acknowledgment or reply from Mr. Acheson, I wrote him under date of January 3, 1962, asking him to write me what, if any, action he has taken, or will take, in the matter, and also asking him, if he has not taken, and does not propose to take any action, to inform whether this is due to his (1) conclusion that Mr. Laughlin's letter does not constitute an offense, (2) disinelmination to become engaged in a legal controversy with Mr. Laughlin, or (3) conclusion that I am not entitled to, or included within the, protection of the law against threats. I have not received any response from him.

My belief that Mr. Laughlin's letter is improper and unethical conduct, and also illegal conduct in violation of Section 22-2305, is based upon the following (all of which is more particularly set out in Mrs. Eva F. Midgett's September 24, 1960, complaint, and my May 10, 1961, comments to you, now pending):

June 30 Received Mrs. Eva F. Midgett's power of attorney and fee agreement. She, prior to about July 21, 1959, had been the sole stockholder in and of Wise & Midgett, Inc. (Delaware).

July 25 Mr. S. G. Leoffler, Sr., and I spent most of the day at the office of Clifford and Ahern at Suite 907, 839 - 17th St., N.W., examining Wise & Midgett, Inc. (Delaware), bank statements, cancelled checks and check stubs.

July 26 Mr. Leoffler, accompanied by me, had Mr. and Mrs. Victor Gregorie as guests at dinner. Mr. Gregorie had been accountant for Mrs. Midgett's Wise & Midgett, Inc. (Del.) We interrogated them about the checks and other records we had seen the day before and nothing more, as we then were only investigating. Subsequently, they made statements and testified, contrary to the facts, that I had flatly charged that Mr. Clifford had taken the proceeds of at least one check for himself. Mr. Leoffler and I have testified in C.A. 3050-60 that we carefully asked only questions and made no charges of misappropriation.

August 4 I wrote Clifford and Ahern that I represented Mrs. Midgett, who, in my opinion, has very substantial claims against them, jointly and severally, and requested a conference.

August 10 I received Ahern's letter dated August 9, 1960, threatening a suit for damages, and making charges against me. I believe this was the opening of a campaign to scare me off from representing Mrs. Midget and pressing her claims against Ahern and Clifford. The charges are false.

August 10 I wrote Ahern my letter of that date, and again requested a conference.

August 17 Ahern wrote me a letter under this date.

August 24 I wrote Clifford and Ahern my letter of this date, again requesting a conference.

Sept. 9 Never being accorded a conference by Ahern and Clifford, or either of them, I wrote my letter of this date to Mrs. Midgett and Mr. Leoffler and mailed with it to each of them copies of my draft of what became Mrs. Midgett's September 14, 1960, complaint before your Committee. My letter shows that I would soon send them copies of my draft of Mrs. Midgett's complaint for damages. (It was actually filed May 4, 1961, as C.A. 1363-61.)

Sept. 15 Clifford and Ahern instituted Civil Actions 3049-60 and 3050-60 in which they made charges against me personally that are not only false and without any support, but are immaterial, impertinent, redundant and scandalous. I believe these were two steps in a campaign to scare me off from representing Mrs. Midgett and pressing her claims against Ahern and Clifford. I also believe they were instituted and intended wrongfully to hinder and delay Mrs. Midgett. I filed three motions in Civil Action 3049-60, but could not secure a hearing although they came up three or four times. It is important to note that C.A. 3049-60 against Mrs. Midgett, Mr. Leoffler, myself, and

others, filed by Ahern as attorney for plaintiffs, had the effect, as provided by Federal Civil Rule 13, of requiring, as to Mrs. Midgett's claims for damages against Ahern and Clifford, that Mrs. Midgett "shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action." The first count of the C.A. 3049-60 complaint is for recision of the July 21, 1959, Contract of Sale, which Mrs. Midgett claims was a fraud upon her. I believe and submit that the record in C.A. 3049-60 shows that it was filed for the purpose of hindering and delaying Mrs. Midgett's claim against Ahern and Clifford.

Sept. 26 Received Mrs. Midgett's September 24, 1960, letter with four executed copies of her September 24, 1960, complaint which was filed that day and is now before your Committee.

Oct. 29 James J. Laughlin entered his appearance in C.A. 3050-60, as attorney for Plaintiffs Clifford and Ahern.

Nov. 19 Clifford and Ahern, by James J. Laughlin, as their attorney at law, filed in Civil Action No. 3050-60 their Amended Complaint for Slander, increasing their claims from $100,000.00 to $200,000.00. There had been no change in or of circumstances, and the action was still based upon the events of July 26, 1960. I believe and submit that this was another step in the campaign to scare me off from representing Mrs. Midgett and pressing her claims against Ahern and Clifford.

Dec. 30 James J. Laughlin entered his appearance in C.A. 3049-60 as attorney at law for Plaintiffs Clifford and Wise & Midgett, Inc. (D.C.)

1961

Feb. 17 As the front of the C.A. 3049-60 jacket shows, plaintiffs in that action (Clifford and Wise & Midgett, Inc. (D.C.)) orally moved to dismiss it, although the order presented by Laughlin, with Ahern present, as plaintiffs' attorneys, stated that the order is based upon motions of the defendants to dismiss, etc. Thereby the District Court "ORDERED that the motion to dismiss as to all defendants be and the same is hereby granted, and IT IS FURTHER ORDERED that upon the oral application of counsel for the plaintiffs for leave to file an amended complaint be and the same is hereby granted." The District Judge, as the transcript shows, believed that his order of dismissal terminated the litigation, if there were no amendment. Believing this view incorrect in law, and to test it, C.A. 3049-60 Defendants Leoffler and Espey appealed.

Mar. 18 C.A. 3049-60 Defendants Leoffler and Espey filed their Notice of Appeal to test whether the February 17, 1961, order of dismissal granting plaintiffs leave to amend was a final order of dismissal.

Apr. 6 C.A. 3049-60 Plaintiff Clifford on April 6, 1961, filed in Appeal No. 16,292, his Motion to Docket and Dismiss Appeal, based in part on the proposition that the February 17, 1961, order was not a final decision.

Apr. 12 Appeal No. 16,292 Appellants Leoffler and Espey filed "Appellants' Answer to Motion to Docket and Dismiss Appeal. Therein Appellants Leoffler and Espey stated that they were "inclined to believe that the Order is not one of the 'final decisions' mentioned in 28 U.S.C.A. 1291, but submit the issue to this Court for decision." Said Appellants Leoffler and Espey - not

Appellee Clifford - cited to the Court of Appeals Jung v. K. & D. Mining Co., 1958, 356 US 335, 2 L ed 2d 806, 78 S Ct 764, which holds that an order dismissing a complaint and granting leave to plaintiffs to amend their complaint did not constitute the final judgment in the case, even though the plaintiffs failed and neglected for almost two years to amend.

Apr. 27 The U.S. Court of Appeals for D.C. Circuit in No. 16,292, "Upon consideration of appellee's motion to docket and dismiss, of appellant's answer and appellees' reply," "ORDERED by the Court that this appeal is dismissed . . ." Thus appellants Leoffler and Espey ascertained that the February 17, 1961, C.A. 3049-60 order of dismissal with leave to amend was not a final order of dismissal of the action.

Apr. 29 With my letter of this date mailed Mrs. Midgett my drafts of her C.A. 1363-61 complaint and her affidavit in support of her application to sue in forma pauperis without securing costs.

May 2 I received Mr. Laughlin's May 1, 1961, letter, subject to this complaint, copy of which is attached. I believe and submit that it was a threat in violation of ethics, my duty to my client, Mrs. Eva F. Midgett, and of Section 22-2305 to scare me off from pressing and prosecuting Mrs. Midgett's claims for damages against Messrs. Ahern and Clifford, and another step in the campaign hereinbefore mentioned. I believe and submit that the litigation Mr. Laughlin refers to as having taken up a great deal of Mr. Ahern's time is that involving Mrs. Midgett's claims against Ahern and Clifford, which she was prevented from making in C.A. 3049-60 by the tactics of Ahern, Clifford and Laughlin. Up to and including May 2, 1961, the only litigation had

been filed by Ahern and Clifford; Mrs. Midgett had filed no litigation, only her September 24, 1960, complaint now before your Committee. I believe and submit that Mr. Laughlin threatened me with several civil litigations if I pressed and prosecuted Mrs. Midgett's claims against Ahern by litigation.

May 4 I filed C.A. 1363-61, Eva F. Midgett, Plaintiff, vs. John Kealy Clifford and Albert J. Ahern, Jr., Defendants, upon Mrs. Midgett's Complaint For Damages For Fraudulent Breach Of Contract And Duty As Plaintiff's Attorneys At Law, for the sum total of $32,949.83, and interest thereon at eight per centum per annum from April 30, 1961, to the date of judgment, etc.

Mr. James J. Laughlin has never executed his threat of suing me additionally, set out in letter of May 1, 1961, addressed to me, even though I promptly thereafter proceeded with pressing and prosecuting Mrs. Midgett's claims against Ahern and Clifford by instituting C.A. 1363-61. I believe and submit that this is evidence that the threat was only a threat, and improper, unethical and also illegal.

I request the Court to take appropriate disciplinary action against Attorney at Law James J. Laughlin, located at National Press Building, 14th and F Streets, N.W., Washington 4, D. C.

Respectfully submitted,

/s/ H. Clay Espey,
219 Southern Building,
Washington 5, D. C.

DISTRICT OF COLUMBIA, SS:

H. Clay Espey, being first duly sworn according to law deposed and said:

That he has read and knows the contents of the foregoing complaint (including attached exhibit), subscribed by him, and that he verily believes the statements of fact made in said complaint to be true.

(S) H. Clay Espey
H. Clay Espey

[Jurat Omitted]

Exhibit A

JAMES J. LAUGHLIN
Attorney and Counsellor at Law
National Press Building
Washington, D.C..
* * *

May 1, 1961

[Rec'd 12:10 P.M.-
May 7, 1961 H.C.F]

Mr. H. Clay Espey
Attorney at Law
Southern Building
Washington 5, D. C.

Re: Severine G. Leoffler, Sr. and H. Clay Espey v.
John K. Clifford and Wise & Midgett, Inc.,
Court of Appeals No. 16,292.

Dear Mr. Espey:

You no doubt have received the order of the Court of Appeals dismissing the appeal that you perfected in this case assessing costs. Rather than file a detailed bill of costs and in order to end this rather senseless litigation, you may consider this letter a demand for the $25 docket fee which will be shortly assessed by the Court of Appeals. The check should be made payable to John K. Clifford, Albert J. Ahern, Jr. and the undersigned.

I now agree with Mr. Ahern that this litigation has gotten all out of hand and has taken up a great deal of my time and a great deal of his time. In view of the recent actions of the Court of Appeals in expunging your affidavit and in dismissing this appeal, we have had under consideration amending our slander complaint to add an additional count and to institute possibly two other civil actions against you. We realize, however, that the institution of these actions will consume a great deal of time and effort and this is to advise you that should there be any further activity on your part seeking to consume Mr. Ahern's time with this litigation, obviously without merit, these actions will be instituted forthwith.

Since you have handled this appeal in proper person, I am addressing this letter to you. I am, however, sending a copy of said letter to Mr. Stewart as I feel that he should be conversant with the status of the matter since you are

apparently controlling the litigation.

Thanking you, I am

Sincerely yours,

/s/ James J. Laughlin
James J. Laughlin

JJL:lk
cc: William E. Stewart, Jr.

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* * *
* * *
* * *
* * *

UNITED STATES DISTRICT COURT

For the District Of Columbia

Committee on Admissions and Grievances

Room 6409 United States Court House

Washington 1, D. C.

* * *
* * *
* * *
* * *

February 8, 1962

Exhibit C

H. Clay Espey, Esquire
219 Southern Building
1425 H Street, N.W.
Washington, D. C.

Dear Mr. Espey:

The Committee at its meeting held yesterday gave consideration to the complaint filed by you against James J. Laughlin, Esq., based on a letter written to you by Mr. Laughlin, dated May 1, 1961, copy of which is attached to your complaint.

After careful study of this letter and of the accompanying material, the Committee reached the conclusion that it would not be justified in instituting disciplinary action against Mr. Laughlin.

Yours very truly,

/s/Ralph A. Curtin
Secretary

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN,

Plaintiff,

v.

H. CLAY ESPEY,

Defendant.

[Filed April 7, 1962]

Civil Action No. 882-62

DEFENDANT'S MOTION TO DISMISS, ON PRIVILEGE

Comes now the defendant and moves the Court to dismiss the complaint and this civil action, and for grounds states:

1. Plaintiff's complaint filed herein fails to state a claim against defendant upon which relief can be granted, inasmuch as all of defendant's alleged actions, on the face of the complaint, are absolutely legally privileged and do not show any basis of a valid legal action for plaintiff.

2. All of the actions of defendant with regard to plaintiff are and were absolutely legally privileged, and not a basis of a valid legal action, the facts of all of defendant's pertinent and relevant actions being shown by his attached affidavit and exhibits which are made part hereof by this reference.

3. The Clerk of this Court, Harry M. Hull, Esq., was and is the proper person to receive for this Court for filing defendant's complaint to this Court and its Grievance Committee, so that defendant had and has legal immunity for mailing his complaint against Plaintiff Laughlin (addressed to this Court and its Grievance Committee) to said Clerk by sealed envelope by first class mail.

4. United States Attorney David C. Acheson in and for the District of Columbia, the prosecuting attorney of criminal law violations in said District, was the proper person to whom defendant could complain with legal immunity about Plaintiff Laughlin's threat by his May 1, 1961, letter to defendant.

See: As to defendant's complaint to the Court and its Grievance Committee:

Brown v. Shimabukuro et al., 73 App. D.C. 194, 118 F2d 17.

Young v. Young, 57 App. D.C. 157, 18 F2d 807.

Harlow v. Carroll, 6 App. D.C. 128.

As to defendant's communication to United States Attorney Acheson:

Vogel v. Gruaz, 110 U.S. 311, 28 L. ed 158.

Borg v. Boas, etc., 231 F2d 788, 796.

Respectfully submitted,

/s/ H. Clay Espey
H. Clay Espey, Defendant
In Proper Person.

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN, Plaintiff,	)	[Filed April 7, 1962]
v.	)	Civil Action No. 882-'62
H. CLAY ESPEY, Defendant.	)	

DEFENDANT'S MOTION TO QUASH AND STRIKE NOTICES OF DEFENDANT'S DEPOSITION

Comes now the defendant and moves the Court to quash and strike plaintiff's Notice of Deposition, served by mail March 28, 1962, and filed herein March 29, 1962, and plaintiff's Amended Notice of Deposition, served by mail March 30, 1962, and filed herein March 31, 1962, and for grounds states:

1. Both notices are invalid, having been served without leave of Court within 20 days after commencement of this action, which was filed March 16, 1962, in violation of the requirement of leave of Court provided by Federal Civil Rule 26 (a), as shown by the record herein.

2. Plaintiff has not stated and does not have a valid cause of action, and, consequently, has no right to invade defendant's right of privacy and take

defendant's deposition, as shown by defendant's Motion To Dismiss, On Privilege, supported by defendant1s affidavit attached thereto, filed in this action and made part hereof by this reference.

3. Plaintiff's proposed examination by deposition of defendant and defendant's papers and effects, as outlined in plaintiff's Amended Notice of Deposition, given under the authority of this United States District Court for the District of Columbia and the Federal Rules of Civil Procedure, constituted by the United States under the authority of the Constitution of the United States, contravenes and violates defendant's rights under the Fourth Amendment that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . .", inasmuch as plaintiff has no cause of action against defendant, as shown by defendant's Motion To Dismiss, On Privilege, supported by defendant's affidavit attached thereto, filed in this action and made part hereof by this reference.

Respectfully submitted,

/s/ H. Clay Espey
H. Clay Espey, Defendant
In Proper Person.

[Certificate of Service Omitted]

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN, Plaintiff,	)	
v.	)	Civil Action No. 882-'62
H. CLAY ESPEY, Defendant.	)	

DEFENDANT'S POINTS AND AUTHORITIES SUPPORTING HIS MOTION TO QUASH AND STRIKE NOTICES OF DEFENDANT'S DEPOSITION

1. Plaintiff1s notices of deposition are invalid because served without leave of Court within 20 days after commencement of this action in violation

of Federal Civil Rule 26 (a). Plaintiff's first Notice Of Deposition was served by mail on March 28, 1962, and plaintiff's Amended Notice of Deposition was served by mail on March 30, 1962, both within 20 days after commencement of this action on March 16, 1962.

Bowles v. Beatrice Creamery Co., CCA, 1944, 146 F2d 774, holds that where production of books and papers is sought to be compelled by lawful process, the person to whom process is addressed may challenge its legality before being compelled to respond thereto. At page 779 the Court said:

> ". . . Moreover, the person to whom such process is addressed may challenge its legality before being compelled to respond thereto."

2. Plaintiff has no legal right to take defendant's deposition inasmuch as plaintiff has no cause of action against defendant inasmuch as plaintiff's complaint fails to state a claim against defendant upon which relief can be granted, all of defendant's actions with regard to plaintiff which are the subject of this action being absolutely legally privileged and not the basis of a valid cause of action, as shown by defendant's Motion to Dismiss, On Privilege, supported by defendant's affidavit attached thereto, both filed herein and made part hereof by this reference.

See: Boro Hall Corporation v. General Motors Corporation, D.C. N.Y. 1941, 37 F.Supp. 999. Affirmed 124 F2d 822, rehearing denied 130 F2d 196, certiorari denied 63 S.Ct. 436, 317 U S 695, 87 L ed 556.

3. The United States Government, having no constitutional or legal power to make unreasonable searches and seizures in violation of the right of the people to be secure in their persons, houses, papers, and effects, cannot constitutionally and legally confer any right upon plaintiff to invade defendant's right of privacy and made an unreasonable search of defendant's person, papers, and effects, which would occur by plaintiff's proposed deposition, inasmuch as plaintiff has not alleged a valid cause of action, and does not have a valid cause of action as shown by defendant's affidavit. A plaintiff has a right to make search of a defendant, his papers and effects by deposition only where he alleges a valid cause of action.

In Watkins v. United States, 1957, 354 US 178, 1 L ed 2d 1273, 77 S Ct. 1173, Chief Justice Warren held in connection with congressional investigations as follows:

> ". . . This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. . . ."

In Weeks v. United States, 1914, 222 U.S. 383, 392, 58 L ed 652, 655, Mr. Justice Day held:

> "The effect of the 4th Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects, against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our Federal system with the enforcement of the laws. . . ."

In Poe v. Ullman, 1961, ___US___, 6 L ed 2d 989, 81 S Ct___, Mr. Justice Harland, in dissenting, quoted Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 US 438, at 478, 72 L ed 944, 956, 48 S Ct 564, 66 ALR 376, as follows:

> "The protection guaranteed by the (Fourth and Fifth) Amendments is much broader in scope. . . . They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. . . ."

Defendant would give his deposition to plaintiff only under the constitutional power of the United States exercised by this Court; defendant would not give his deposition voluntarily merely because plaintiff asked for it. The compelling of defendant's deposition would in the circumstances be an "unjustifiable intrusion by the Government upon the privacy of the individual" (defendant). See Zimmerman v. Wilson, 81 F2d 847 (C.C.A. 3).

Rogers v. United States, 1st Cir., 1938, 97 F2d 691, holds that a civil action judgment is invalid where it was rendered on evidence obtained in violation of the Fourth Amendment, and reversed a civil action judgment rendered below for the United States.

Pugach v. Klein, etc., 193 F.Supp. 630, at p. 641, holds:

> "The Fourth Amendment casts a special duty upon the judiciary to protect the right of the people to be let alone. 'This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws.' Weeks v. United States, 1914, 232 US 383, 392, 34 S.Ct. 341, 344, 58 L ed 652."

CONCLUSION

Defendant submits that the Court should quash and strike plaintiff's Notice of Deposition and Amended Notice of Deposition as invalid and not properly based upon a valid cause of action.

Respectfully submitted,

H. Clay Espey, Defendant
In Proper Person.

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN,
Plaintiff,
v.
H. CLAY ESPEY,
Defendant.

[Filed April 7, 1962]

Civil Action No. 882-'62

NOTICE

TO: Plaintiff James J. Laughlin,
National Press Building,
Washington 4, D. C.

This is your notice that defendant will appear before the Motions Judge, expected to be Judge Hart, at 10 O'clock, A.M., on Tuesday, April 10, 1962, and ask the Court as a preliminary matter to strike or stay the notices of my deposition given by you in this case until such time as the Court disposes of the pending Motion To Dismiss, On Privilege, and Motion To Quash And Strike Notices of Defendant's Deposition, copies of which are served herewith.

There will be no further notice of this proceeding.

/s/ H. Clay Espey, Defendant
In Proper Person.

[Certificate of Service Omitted]

In The

UNITED STATES DISTRICT COURT

For the District Of Columbia

JAMES J. LAUGHLIN,
Plaintiff,
v.
H. CLAY ESPEY,
Defendant

[Filed April 10, 1962]

Civil Action No. 882-'62

AMENDED NOTICE OF DEPOSITION

To: H. Clay Espey, Esq.
219 Southern Building
1425 H Street, N.W.
Washington, D. C.

Please take notice that pursuant to Rule 26 of the Federal Rules of Civil Procedure plaintiff will proceed to take the deposition upon oral examination of H. Clay Espey, defendant herein, at 3:30 P.M. Wednesday, April 18, 1962, at the office of James J. Laughlin, 1119 National Press Building, Washington, D.C., before a Notary Public authorized by law to administer oaths. As the 21-day period will have expired by that date, you are required to be present at the time and place designated.

You will bring with you copies of all letters you have written to Judges, Court personnel, Committee on Admissions and Grievances and any other officers, offices or agencies, and any and all other persons regarding litigation involving Albert J. Ahern, Jr., John K. Clifford and Wise & Midgett, Inc. in which plaintiff's name was mentioned. You will also bring with you copies of your income tax returns for the last three years; also copies of your bank statements and your bank transactions for the last three years, and a list of all your real estate holdings and a list of all your investments, stocks, bonds, etc. and any and all other matters with regard to your finances.

/s/ James J. Laughlin
James J. Laughlin
National Press Building
Washington 4, D. C.
Plaintiff in Proper Person

[Certificate of Service Omitted]

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN,

Plaintiff,

v.

H. CLAY ESPEY,

Defendant.

[Filed April 1, 1962]

Civil Action No. 882-'62

ORDER STAYING ALL DEPOSITIONS OF DEFENDANT

Upon consideration of the application of defendant to strike or stay plaintiff's notices of defendant's deposition, and noting that Defendant's Motion To Dismiss, On Privilege, is pending, it is, by the Court, this 11th day of April, 1962,

ORDERED that all notices by plaintiff of defendant's deposition, and any taking of defendant's deposition by plaintiff be, and they hereby are, stayed and held in abeyance until hearing and decision on Defendant's Motion to Dismiss, On Privilege, and [redacted]. [C.G.H.]

/s/ George A. Hart
Judge

[Certificate of Service Omitted]

TRANSCRIPT OF PROCEEDINGS

[Filed July 26, 1962]

[Heading Omitted]

* * * * *

3 PROCEEDINGS

11:20 a.m.

THE DEPUTY CLERK: Number 11, Laughlin versus Espey.

MR. STEWART: If Your Honor pleases, this is the defendant's motion to dismiss. This might be characterized at the outset as somewhat of an emotion packed suit, but I have gathered from Your Honor's observations early this morning in regard to other cases that you have probably read the pleadings filed.

THE COURT: I have read them.

MR. STEWART: And I don't propose, under those circumstances, unless Your Honor suggests to the contrary, to go into any great length of oral argument on the matter.

However, as I understand the complaint filed in this suit, there is charged against the defendant an action, alleged action for malicious prosecution, an alleged action for libel.

It is contended that the defendant filed with the Clerk's Office of this Court a document setting forth grievances, or alleged grievances against the plaintiff, charging him with improper conduct, which document was for the attention of the Grievance Committee of this Court.

I further understand the complaint to charge that there was a further complaint made by the defendant in writing to the U.S. Attorney's Office for the attention of the United States Attorney, Mr. Acheson.

These allegations, it is submitted, do not constitute a cause of action, inasmuch as the defendant is a member of the Bar and his actions are privileged; they are in fact absolutely privileged in the prosecution of these matters.

The fact that the charges are labelled false or malicious do not change the defendant's status and he still enjoys the absolute privilege accorded to him under the decisions which we have cited at some length in the memorandum and supplemental memoranda filed in support of the motion.

There are several decisions of our own United States Court of Appeals which we principally rely upon and which quotations from are contained in the memoranda.

The fact that the one document in particular, that which was addressed to Mr. Hull, Clerk of the Court, for the attention of the Grievance Committee, the fact that that was filed with the Clerk of the Court as distinguished from being filed with the Committee itself likewise does not change the picture.

We have cited the facts in a case which would appear to be on all fours, in which there was a filing of a grievance complaint with the Clerk as distinguished from the Judge who was designated under the rules of the Court to receive such complaints. And as indicated in that decision, the concern of

5 the Court of the law is that there be available an avenue, an open avenue for the complaints to be filed.

Now, I respectfully submit, Your Honor, that this motion to dismiss this two-count complaint should be granted.

THE COURT: Mr. Laughlin, let me ask you something. Your reputation hasn't been hurt one iota by these charges?

MR. LAUGHLIN: Well, assuming that is true, Your Honor, I don't think that answers the question. I might say, to answer frankly, I don't suppose many people knew about them.

THE COURT: Not only that, but those that knew about it didn't pay the slightest attention to it.

MR. LAUGHLIN: Of course, the Grievance Committee didn't.

THE COURT: Neither did the United States Attorney.

MR. LAUGHLIN: But, of course, this individual has a habit for complaining against lawyers. He has complained against other lawyers. Now, the point is this, Your Honor, he has got to be stopped in some way. He will never take an adverse ruling. He had poor Carl Shipley almost ragged. And then he filed in the Court of Appeals some charges they were politically inspired, they spun something he filed up there, and there is now pending in that Court, I am told, a suggestion of misconduct as to this man.

6 But if we take this view of it, Your Honor, suppose you were now in private practice and were not a Judge, you certainly wouldn't be very happy about a letter of this kind. I think it states a cause of action and, of course, in the complaint he refers to Mr. Ahern and Mr. Clifford too. Maybe they should later be joined in this; I don't know. But the letter I wrote on May 1, Your Honor, and this was a mailed letter. In times past I have written some letters that maybe have been a little strong, but this is a mild kind of a letter, Your Honor. All I told him was to comply with the mandate and pay $25.00 as called for in the mandate, and the check should be made payable to Mr. Clifford, Mr. Ahern and to me. Then I go on to say that there has to be a halt. Now, of course, as far as Mr. Ahern and Mr. Clifford are concerned, I think they have two or three file drawers of litigation insofar as this mandate is concerned, but my letter, I could see no justification.

Now, he accuses me of blackmail. Now, Your Honor, Mr. Stewart referred, although not by name, I think he referred at least by inference to the New Jersey Case, I think, as to qualified privilege. First, it is absolute. Later it was absolute. But we must keep in mind this in that Case, Your Honor, and it is 113 Atlantic 2d, that they did say this, and I don't think our Courts would follow that opinion anyway:

"In reaching this determination we have in mind that this Court has at all times the inherent power to punish for contempt those who may file baseless complaints or falsely testify or otherwise attempt to hinder the due process of justice. And we should not hesitate to use this power if the circumstances warrant it to protect the interests of an aggrieved member of the Bar."

Now, also as a part and pattern of the tactics pursued by this man, I served a notice for the taking of a deposition. Now, of course, Your Honor has had so many cases before you you couldn't remember every case, but he said he was going to appear in motions court on a certain day to continue the deposition. I came that day and Your Honor was in another branch of the Court and you wouldn't be on until 11:00 o'clock. I met Mr. Stewart outside of Judge Tamm's Court because he had mentioned to go before you or Judge Tamm. Therefore, when we didn't see the defendant Espey there we assumed there would be nothing further. Then he comes before your Court, comes before Your Honor at 11:00 o'clock without any notice to me, makes a bold statement to Your Honor and then as a result of which Your Honor did put it over. And then he presents an order without any notice to me and he puts words in that order. Now, my position is, Your Honor, that I am entitled to the deposition of this man because I can show publication other than the publication we referred to herein.

Now, this man well knows – he has been practicing here; he has been practicing here, I think, since I believe someone said since Judge Beard was in kindergarten; but, anyway, he has been practicing here a long time – he knows that we have a well-organized procedure.

Now, if the man has a valid complaint, Your Honor, the Grievance Committee is open. It is for that purpose and you can lodge it. And the

purpose of that is this, Your Honor, those matters are maintained in secrecy until such time as the Grievance Committee feels that there is justice and some merit and that the attorney should answer. Then they present them to the Court and the Court orders them filed. This is a deliberate attempt on his part to send this to Mr. Hull's Office knowing it is going to go through several hands. Now, of course, I couldn't say, Your Honor, that anyone in Mr. Hull's Office thought -

THE COURT: Don't you think the people in Mr. Hull's Office have got too much to do to stop and read this kind of tripe?

MR. LAUGHLIN: I do think they have too much, and I spoke to all of those gentlemen, Your Honor, and I don't think any of them have ever accused me with blackmail. The only difference I had with one of them was he would root for the New York Yankees; and those are the only people I don't like, the New York Yankees.

THE COURT: Tell me, Mr. Laughlin, you have been at the Bar here a long time, don't you think it is time you mellowed and considered the source and forgot the whole cockeyed thing?

MR. LAUGHLIN: But, Your Honor, how are we going to stop this character? There is an old saying that refers to some animal of the field, an animal you spell with five letters, "When you get in a quarrel with that kind of an animal you come off worse." But, Your Honor, there has got to be a halt.

Now, I might say the Heavens wouldn't fall in if this case is terminated, that the sun will rise tomorrow, but -

THE COURT: And you will be a lot happier.

MR. LAUGHLIN: But the point is this, Your Honor, this would never end with this man. I think that it states a cause of action now, and it may well be after I take the deposition, if I don't show further publication, it may be that he may prevail on a motion for summary judgment. But until Mr. Stewart came in the case, Your Honor, he was constantly sending documents. And I remember one time when he presented me with an order that you had already signed. He came in and he must have had rubber heels and rubber

soles. Your Honor, I was reading the morning paper, and it was one of those very happy days because the day before the Yankees had lost a double-header. Anyway, there I looked up and there he was. I don't know how on earth he ever got in the office. And not a word was uttered, not a sound, and he handed me this, and it was an order that he had, I assumed, represented to you that he had served on me. Now, I think this, Your Honor, that we state a cause of action because these were not properly filed.

Now, I realize, Your Honor, if I hadn't had that long case before Judge Walsh I would have prepared you a more sensible memorandum, but I think the opinion of Sowder versus Noland, 125 Atlantic 2d, in our Municipal Court of Appeals, Your Honor - It was written by Chief Judge Rover. And in that case the complaint was made that this Sowder - and of course I am kind of sorry to say, Your Honor, he was my client, but I had came in the case after he had written all these things - But there was a judgment against him in the Court below for libel for writing these scurrilous letters to the Chief of Police and the Court of Appeals said this, Your Honor:

"The letters were not sworn complaints -" In other words, the contention was made that they were privileged. "The letters were not sworn complaints and the mere possibility that a quasi-judicial tribunal might conceivably take jurisdiction of the subject matter after some further action by an entirely independent agency over which the Officer had no control should not de facto cause an absolute privilege to attach to them."

In fact, no set proceeding did or could begin, since charges incorporating these letters were not lodged by the Superintendent of Police and the letters alone had no power to cause a police tribunal to convene. Now -

THE COURT: To whom were those letters sent?

MR. LAUGHLIN: The letters were scurrilous letters about a dereliction on the hands of the police officials, that cases were fixed and all such as that.

THE COURT: And they were sent to whom?

MR. LAUGHLIN: The letters were sent, Your Honor, to the Commissioners and Chief of Police.

I think that the language here is very good. As a matter of fact, I

wasn't told this case, Your Honor, until yesterday afternoon. It says this: And I believe it will be a little helpful if I say the contention was made that letters were absolutely privileged. And then it says:

"This is a libel action in four counts by the appellee –" And the appellee
12 was a policeman, Your Honor, just as in this case I am an attorney, a private in the Metropolitan Police Department, based on four letters written to his superiors by the appellant. Three of the letters were sent to the Chief of Police and one to the Police Captain.

One letter charged that the appellee was "getting away with dishonesty" and the other is he had told falsehoods in a report rendered by him, and so and so. Then the contention was made the letters were absolutely privileged.

The Court of Appeals, Your Honor, said no, because they were not, the letters were not filed in the manner that the regulations provided and as provided by law. And I contend, Your Honor, that then, in addition to this, he writes to the United States Attorney. As I say, all my letter was was in effect to pay the $25.00, the $25.00 that the mandate provided. He not only writes to the Grievance Committee but he wrote to the United States Attorney and suggested that I be indicted for blackmail merely because I asked him to pay the money at the request of Mr. Ahern, to pay the $25.00 set forth in the mandate.

I realize, Your Honor, probably, as Your Honor has stated, that it has probably done no harm, but there is something that has got to be done to stop this man. He will do this consistently.

13 And, Your Honor, assuming that Your Honor took the position that he prevailed on this, this man, he would gloat and in tomorrow morning's mail or by hand there would be volumes in connection with another proceeding, Your Honor.

THE COURT: Against you?

MR. LAUGHLIN: Sir?

THE COURT: Against you?

MR. LAUGHLIN: Oh, yes, probably against me and I don't know whether even Your Honor would be immune. Of course, Your Honor, would

be immune because yours would be a judicial act. But if you could see some of the material which was shown to me that he had filed in the United States Court of Appeals. You know, he had poor Herman Miller – you know Herman is getting kind of fat now; when he falls down he almost rolls – but he had little Herman, Your Honor, for months with one thing and another, the same way with Mr. Shipley.

THE COURT: You know, if there is one gentleman that can probably take care of himself it is Herman Miller.

MR. LAUGHLIN: Yes, I would say so, but poor Herman, he said, "Maybe I should have lost it," but he said, "I lost twenty-eight pounds."

THE COURT: You should be poor like "Poor" Herman.

MR. LAUGHLIN: But maybe it was a good thing in the long run.

14 But, Your Honor, the point is this: I think the cases show, the authorities which are annotated in 52 A.L.R. 2d, as well as the authorities, Your Honor, in another case, Hager versus Hanover Fire Insurance Company, 64 Federal Supplement 949, that it does state a cause of action.

And I think that with this pending – and I believe this – I think that Mr. Curtin feels that this is a blessing in disguise, because since I have filed this suit I don't think he has complained against other lawyers. I think they are able to do some other work, because he said, "Well, the top drawer there is all Espey matters and the rest of my file cabinets relate to matters generally."

THE COURT: You know, the Grievance Committee can handle this thing easily. If one lawyer makes outrageous allegations against another, and from reading this file it looks to me like outrageous allegations were made against you, the Grievance Committee can handle that.

MR. LAUGHLIN: Well, I had hoped they would. And you see, the thing, the damaging thing about this, Your Honor, I didn't even know that this had – Of course, the Grievance Committee took no notice of it. They dismissed it, I think probably in about ten seconds. I just by accident found out about it. Now, the only thing is this: Somebody later maybe, I don't know who, who-

15 ever goes over there files, may say, why here, this man one time was charged with blackmail.

But, of course, I agree with you, Your Honor, the Grievance Committee could handle it and, I think if Your Honor would make a suggestion that it would go back to them for action on their part, the charges, I would be willing, I would go so far as to say this should be terminated, Your Honor. If Your Honor would make some indication, but there has got to be an end to this thing.

THE COURT: I am not going to make any indication in this particular case but I will say that I think where one lawyer makes totally unsubstantiated allegations against another lawyer that the Admissions and Grievance Committee should take action on it. That is just generally true.

MR. LAUGHLIN: You see – Of course, as you said at the beginning, probably it didn't do me any harm, but what I am thinking, Your Honor, is this: There would just be no stopping this man. I understand Mr. Stewart's position. He probably pays on his insurance policy and I guess Mr. Stewart –

THE COURT: I doubt very much if he has got any insurance policy for libel.

MR. LAUGHLIN: Well, I think –

THE COURT: And malicious prosecution. I can't remember any lawyers that have such policies.

MR. LAUGHLIN: Well, Mr. STewart is rather kindly and I think the reason he is here is because he will probably be sued if he doesn't come here. But would Your Honor do this? Would Your Honor hold this? Would you hold this in abeyance for three or four days and let me just give you the benefit – and I will give it to Mr. Stewart too – of these authorities that I have uncovered in the last two days?

THE COURT: I don't think so. I think these things have got to be privileged as far as a suit of this kind is concerned. And if they are going to be stopped I think they ought to be stopped by the Committee on Admissions and Grievance. If we permit this kind of a suit then people will be very reluctant to make bona fide complaints against lawyers before the Grievance Committee. I think they are reluctant enough now and more reluctant than the average case; and the proper administration of our Courts of Justice demands that people shall be allowed to make allegations against lawyers and that they be privileged.

Now, when one lawyer does it against another I think that our Grievance Committee has ample power to protect them and take care of them.

So I am going to dismiss the complaint on the ground of privilege; and I think I am really doing you a favor.

17 MR. LAUGHLIN: Well then, Your Honor, in case I want to pursue it further there will be the usual privilege for leave to amend?

THE COURT: What were you going to say, Mr. Stewart?

MR. STEWART: I would like to speak in opposition to any leave to amend in this case.

THE COURT: Well, we have this situation: Can you allege any dissemination of this information outside of the U.S. Attorney, the Grievance Committee and the Clerk of the Court? In other words, if you could allege that – Well, let's take one example – that he approached some client of yours with this business. That would be – Well, as a matter of fact, I don't think it would be necessary to give you leave to amend. If you had that information you would file a completely separate suit and it would stand on an entirely different basis. What I am ruling is that as far as the Clerk, the U.S. Attorney and the Grievance Committee are concerned, these matters are, regardless of how outrageous and how unsubstantiated they may be, and in this case are appearing from the record, that there is privilege that makes them immune from suit. Of course, if they went outside of that you would be perfectly at liberty to file another suit.

MR. LAUGHLIN: Your Honor, what I had in mind in taking his deposi-

18 tion, I was certain I would be able to show there had been publication outside the offices of the U.S. Attorney, outside the Grievance Committee and outside the Court House.

THE COURT: You don't want to continue with this dirty business.

MR. LAUGHLIN: I will admit it is, but if Mr. Stewart will give us some assurance that he will keep this man in check. That is a large order. If he will keep this man in check and stop him from doing this sort of thing. Of course, I know it is – Maybe I am not the guardian of the rest of the lawyers, but there ought to be some way that this could be stopped, Your

But, of course, I agree with you, Your Honor, the Grievance Committee could handle it and, I think if Your Honor would make a suggestion that it would go back to them for action on their part, the charges, I would be willing, I would go so far as to say this should be terminated, Your Honor. If Your Honor would make some indication, but there has got to be an end to this thing.

THE COURT: I am not going to make any indication in this particular case but I will say that I think where one lawyer makes totally unsubstantiated allegations against another lawyer that the Admissions and Grievance Committee should take action on it. That is just generally true.

MR. LAUGHLIN: You see – Of course, as you said at the beginning, probably it didn't do me any harm, but what I am thinking, Your Honor, is this: There would just be no stopping this man. I understand Mr. Stewart's position. He probably pays on his insurance policy and I guess Mr. Stewart –

THE COURT: I doubt very much if he has got any insurance policy for libel.

MR. LAUGHLIN: Well, I think –

THE COURT: And malicious prosecution. I can't remember any lawyers that have such policies.

MR. LAUGHLIN: Well, Mr. STewart is rather kindly and I think the reason he is here is because he will probably be sued if he doesn't come here. But would Your Honor do this? Would Your Honor hold this? Would you hold this in abeyance for three or four days and let me just give you the benefit – and I will give it to Mr. Stewart too – of these authorities that I have uncovered in the last two days?

THE COURT: I don't think so. I think these things have got to be privileged as far as a suit of this kind is concerned. And if they are going to be stopped I think they ought to be stopped by the Committee on Admissions and Grievance. If we permit this kind of a suit then people will be very reluctant to make bona fide complaints against lawyers before the Grievance Committee. I think they are reluctant enough now and more reluctant than the average case; and the proper administration of our Courts of Justice demands that people shall be allowed to make allegations against lawyers and that they be privileged.

Now, when one lawyer does it against another I think that our Grievance Committee has ample power to protect them and take care of them.

So I am going to dismiss the complaint on the ground of privilege; and I think I am really doing you a favor.

17 MR. LAUGHLIN: Well then, Your Honor, in case I want to pursue it further there will be the usual privilege for leave to amend?

THE COURT: What were you going to say, Mr. Stewart?

MR. STEWART: I would like to speak in opposition to any leave to amend in this case.

THE COURT: Well, we have this situation: Can you allege any dissemination of this information outside of the U.S. Attorney, the Grievance Committee and the Clerk of the Court? In other words, if you could allege that – Well, let's take one example – that he approached some client of yours with this business. That would be – Well, as a matter of fact, I don't think it would be necessary to give you leave to amend. If you had that information you would file a completely separate suit and it would stand on an entirely different basis. What I am ruling is that as far as the Clerk, the U.S. Attorney and the Grievance Committee are concerned, these matters are, regardless of how outrageous and how unsubstantiated they may be, and in this case are appearing from the record, that there is privilege that makes them immune from suit. Of course, if they went outside of that you would be perfectly at liberty to file another suit.

MR. LAUGHLIN: Your Honor, what I had in mind in taking his deposi-

18 tion, I was certain I would be able to show there had been publication outside the offices of the U.S. Attorney, outside the Grievance Committee and outside the Court House.

THE COURT: You don't want to continue with this dirty business.

MR. LAUGHLIN: I will admit it is, but if Mr. Stewart will give us some assurance that he will keep this man in check. That is a large order. If he will keep this man in check and stop him from doing this sort of thing. Of course, I know it is – Maybe I am not the guardian of the rest of the lawyers, but there ought to be some way that this could be stopped, Your

Honor; and as I say, particularly the letter. You probably read the letter. It was a very harmless letter, a letter any lawyer would write.

THE COURT: Well, I think this thing will hang itself if it keeps on. I will sustain the motion to dismiss on the ground that I have stated.

(Whereupon the motion was concluded and the Court recessed at 11:45 a.m.)

In The

UNITED STATES DISTRICT COURT

For The District Of Columbia

JAMES J. LAUGHLIN, Plaintiff,	:	
v.	:	Civil Action No. 882-'62
H. CLAY ESPEY, Defendant.	:	

ORDER

Upon consideration of the Motion of the Defendant to dismiss on privilege, the Memoranda of Points and Authorities in support thereof and the Memoranda of the Plaintiff in opposition thereto and after full hearing in open Court, it is by the Court this 1st day of June, 1962,

ORDERED, that the Motion be and hereby is granted and this cause be and hereby is dismissed with prejudice and without costs.

/s/ George A. Hart
Judge

Copy of the foregoing has been mailed this 31st day of May, 1962, to James J. Laughlin, Esq., attorney pro se, National Press Building, Washington, D. C.

GALIHER & STEWART
/s/ Wm. E. Stewart, Jr.
William E. Stewart, Jr.
Attorneys for Defendant

* * * *

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES J. LAUGHLIN, :

Plaintiff :

v. : C. A. 882-62

H. CLAY ESPEY, :

Defendant :

Washington, D. C.
Tuesday, April 10, 1962.

The above-entitled matter came on for hearing at 11:00 a. m. before the HONORABLE GEORGE L. HART, Jr., United States District Judge, as a preliminary matter.

APPEARANCES:

On behalf of the plaintiff:

Not represented

On behalf of the defendant:

H. CLAY ESPEY, ESQ.

PROCEEDINGS

THE DEPUTY CLERK: Are there any preliminary matters?

MR. ESPEY: May it please the Court, in Civil Action 882-62, Laughlin versus Espey, under my motion to partially strike notices of deposition for this afternoon at 3:30 I apply to Your Honor to strike or stay the notices of my deposition on the ground stated in the motion, first of which is that the notices were served within twenty days of the commencement of suit without leave of Court.

I might inform Your Honor that I received in this morning's mail an amended notice of deposition from Mr. Laughlin resetting the deposition for April 18, 1962, which I would take to be a concession that my points of my motion are well taken.

I would like to point out to Your Honor that in the case of Bowles versus Beatrice Creamery Company, 146 F.2d 774,* the Court held the person to whom process is addressed may challenge its legality before being compelled to respond thereto. So I ask Your Honor to stay or strike the first notice of deposition and the first amended notice of deposition for 3:30 this afternoon.

THE COURT: Where is Mr. Laughlin? Was Mr. Laughlin served with notice that you were to appear here this morning?

MR. ESPEY: Yes, sir, the certificate of service is right on the top there, Your Honor.

* Bowles, Adm'r. Office of Price Administration v. Beatrice Creamery Co., Same v. Voerding, Nos. 3040, 3041, Tenth Circuit

THE COURT: What kind of foolishness is this?

MR. ESPEY: I personally think it is completely erroneous and that I acted only within absolute legal privilege.

THE COURT: You have pending a motion to dismiss and a motion to quash?

MR. ESPEY: That is correct.

THE COURT: The motion to quash is for the deposition?

MR. ESPEY: That is only for the deposition for this afternoon.

THE COURT: Well, I will stay the deposition until after the hearing on the motion to dismiss.

MR. ESPEY: Very well, Sir.

With respect to the notice that I received in this morning's mail resetting the deposition for 3:30 on April 18th, should I submit --

THE COURT: I will stay all depositions of the defendant until the hearing is had on the motion to dismiss.

Present an order to that effect.

MR. ESPEY: Yes, sir; I will do that, sir. Thank you.

THE DEPUTY CLERK: Are there any further preliminary matters?

(Whereupon, the proceedings in the peeliminary matter relative Civil Action 882-62 were concluded.)

167

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 17,199

JAMES J. LAUGHLIN,

Appellant,

v.

H. CLAY ESPEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM E. STEWART, JR.
RICHARD W. GALIHER
JULIAN H. REIS
1215 19th Street, N. W.
Washington 6, D. C.

Attorneys for Appellee.

STATEMENT OF QUESTIONS PRESENTED

The Appellee believes that the questions involved herein are correctly stated by Appellant.

INDEX

TABLE OF CASES

AUTHORITIES AND TEXTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,199

JAMES J. LAUGHLIN,

Appellant,

v.

H. CLAY ESPEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTER STATEMENT OF CASE

In his statement of the case, Appellant, at page 4, refers to Appellee's motion to dismiss the Complaint "supported by an affidavit alleging that all his tortious conduct was absolute privileged." The Appellee's motion to dismiss the Complaint, contained in the joint appendix (J.A. 18), was supported by an affidavit (J.A. 6-8), to which there was appended exhibits A, B, and C (J.A. 8-17). The Appellee neither conceded nor described his own conduct as "tortious."

Again, at page 4 of Appellant's statement of the case, the Appellant goes beyond the record in stating, "Appellant appeared at 10:00 A.M., the Appellee was not present and later in the morning without the presence of Appellant, the Appellee ex parte obtained an Order staying the taking of his deposition." Notice of this proceeding had been given by personal service on April 7, as conceded by Appellant. Appellee learned on arriving at the Court House prior to 10:00 A.M. on April 10, 1962, that the Honorable George Hart, Judge, United States District Court, sitting in the Motions Branch, would not be available in that branch of the Court until after he had concluded conducting naturalization proceedings in the ceremonial courtroom. These proceedings took nearly an hour and Appellee waited until the Motions Branch of the Court was opened by Judge Hart sitting in his own courtroom and then addressed the Court, pursuant to the previously given notice (J.A. 24, 37-39). The Appellee at no time prior to 10:00 A.M. encountered Appellant nor did Appellee see Appellant while awaiting the opening of the Motions Branch of the Court, nor did Appellee see Appellant in the Motions Branch of the Court.

The Order signed by Judge Hart dated and filed April 11, 1962 contained a certificate of service, omitted in the printing of the Order in the joint appendix (J.A. 26), which certificate of service showed that a copy of the proposed Order was left at the office of Appellant at 9:25 A.M. on April 11.

STATUTE AND RULES INVOLVED

Federal Rules of Civil Procedure:

> Rule 26(a). When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking

is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Rule 30(b). Orders For The Protection Of Parties and Deponents. After notice is served for taking a deposition by oral examination, upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

SUMMARY OF ARGUMENT

I

Count I of the Complaint fails, and all of Plaintiff's Complaint fails, to state a claim against Defendant upon which relief can be granted inasmuch as all of Defendant's alleged actions, on the face of the Complaint, are absolutely legally privileged and do not show any basis of a valid legal action for Plaintiff. All of the actions of Defendant with regard to Plaintiff, as shown by the record, are and were absolutely legally privileged, and not the basis of a valid legal action.

II

A person filing a Complaint against an attorney at law and a member of its Bar with the District Court is clothed with absolute legal privilege and immunity from civil action therefore, not merely a qualified privilege and an action thereon for libel or malicious prosecution alleging falsity and malice and determination of the charges in favor of the attorney does not affect, change or remove such absolute legal privilege and immunity from civil action.

III

The District Judge did not err in staying the deposition of Appellee, especially in view of the fact that Defendant's motion to dismiss, on privilege, and Defendant's motion to quash and strike notices of Defendant's deposition were filed and in the record and pending, but undecided. Appellee appeared as soon as the District Judge named in the notice held his Motions Court.

The record is devoid of any effort whatsoever on the part of Appellant to take steps to effect a change in the ruling of Judge Hart staying the deposition of Appellee either between the time of the service of the proposed Order giving effect to such ruling and the signing of the Order or thereafter, up to and including the date of the oral argument on Appellee's motion to dismiss, well over a month and a half after the date of signing and filing of the Order.

IV

The Clerk of the District Court is its principal officer and agent to receive, and with whom to file all Complaints addressed to the Court, including Complaints against the conduct of a member of its Bar, and to refer to the Court's Grievance Committee complaints against a member of its Bar.

V

Complaints by a person to the United States Attorney for the District of Columbia are clothed and made under absolute legal privilege and with absolute legal immunity against civil action for damages.

ARGUMENT

I

THE DISTRICT COURT WAS CORRECT AND DID NOT ERR IN HOLDING THAT APPELLEE'S CONDUCT, AS ALLEGED IN APPELLANT'S COMPLAINT AND AS SHOWN BY APPELLEE, WAS CLOTHED WITH ABSOLUTE LEGAL PRIVILEGE

Appellant suggests in his brief that his letter of May 1, 1961 addressed to Appellee was no more than a request for the payment of $25.00 costs. Appellee believes that the language contained in the letter extends considerably beyond that request alone. To say the very least, the letter was intended to deter Appellee from further action and certainly susceptible to an interpretation and resulting belief that it was intended to deter counsel, acting on behalf of clients, from further action on their behalf under penalty of being sued civilly by Appellant.

Though Appellee does not propose, in this brief, to argue the merits of the Complaint filed in the District Court, and thereafter passed upon by the Grievance Committee of that Court, it would appear noteworthy to invite the Court's attention to the cases supporting the view that a threat by one member of the Bar against another with legal action against him for the purpose of controlling or influencing or stopping the latter's official action can and does create cause for disciplinary action. In re: Malmin, 364 Ill. 164.4 N.E. 2d Ill; In re: Sherin, _____ S. Dak. _____, 210 N.W. 507.

Complaints to a court and also to its Grievance Committee are part of a judicial proceeding. Ramstead v. Morgan, 1959, 219 Oregon 383, 347 P 2d 594, 77 A.L.R. 2d 481: Toft v. Ketchum, 1955, 18 N.J. 280, 113 A 2d 671, 52 A.L.R. 2d 1208. This point is supported by the fact that the District Court's Grievance Committee is constituted as an agency of the District Court by its Local Civil Rule 93(a) and all complaints against the conduct of a member of its Bar "shall be filed with, or referred to, the Committee" under Local Civil Rule 94(a) for action

in accordance with said Rule 94.

Complaints to a Court and also to its Grievance Committee are made under absolute legal privilege and immunity from civil action in damages therefor. The privilege is not conditional, as contended by Appellant, so that even express malice does not affect, change or remove Appellee's absolute privilege. In this case, as required by Local Civil Rule 94(a), Appellee's complaint was made under oath (J.A. 15).

In Brown v. Shimabukuro et al, 73 App. D.C. 194, 118 F2d 17, Judge Edgerton, writing for this Court, stated:

> "In this jurisdiction, among others, statements in pleadings and affidavits are absolutely privileged if they have enough appearance of connection with the case in which they are filed so that a reasonable man might think them relevant. They need not be relevant in any strict sense . . . . . "

See also: Young v. Young, 57 App. D.C. 157, 18 F2d 807; Harlow v. Carroll, 6 App. D.C. 128, pp. 135, 137; Ginsburg v. Black, 7 Cir. 1951, 192 F2d 823, p. 825; Prosser on Torts, 2d Ed., 1955, Chap 19, Defamation, Libel and Slander, Privilege, 95, and p. 607. The Law of Torts, Harper and James, 1956, Volume I, Chap. V, Defamation, Sec. 5.22, p. 421 and p. 426.

Unsuccessful complaints to Courts and Grievance Committees are nevertheless part of judicial proceedings and clothed with absolute legal privilege and immunity from civil action for damages and do not give rise to legal actions for libel or malicious prosecution. Ramstead v. Morgan, 1959, 219 Oregon 383, 347F.2d 594, 77 A.L.R.2d 481; Toft v. Ketchum, 1955, 18 N.J. 280, 113 A2d 671, 52 A.L.R.2d 1208.

Restatement of the Law of Torts, Vol. III, 1938, Chapter 25, pages 229 and 231, states:

> "Sec. 586. Attorneys at Law. An attorney at law is absolutely privileged to publish false and defamatory matter of another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as part of a judicial proceeding in which he

participates as counsel, if it has some relation thereto.

> "Sec. 587. Parties to Judicial Proceedings. A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish false and defamatory matter of another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as part of a judicial proceeding in which he participates, if the matter has some relation thereto."

See also: Absolute Immunity in Defamation, 9 Columbia Law Review, June, 1909, by Judge Van Vechen Veeder, pages 474 and 487.

Supporting Restatement, Sec. 586 or Sec. 587, or both, are: Borg v. Boas, etc., 231 F2d 788; Mathis v. Kennedy, Sup. Ct. Minn., 1954, 67 N.W.2d 413; Johnston v. Schlarb, Wash. Sup. Ct., 1941, 7 Wash. 2d 528, 110 Pac. 2d 190, 134 A.L.R. 474; Strycker v. Levell et al., Sup. Ct. Oregon, 1948, 183 Or. 59, 190 Pac. 2d 922; Zirn v. Collom et al., Sup. Ct., N.Y. County, 1946, 63 N.Y.S. 2d 439; Fleming v. Adams and Greidy, Sup. Ct., Kings County, 1956, 153 N.Y.S. 2d 964.

In Malmin, cited supra, Mr. Slattery, Assistant to Secretary of the Interior, Harold Ickes, said that Malmin in Mr. Ickes' office produced a press statement and showed Slattery another document headed "Prayer and Petition for Disbarment of Harold Ickes" and that Malmin said: "I am going to leave tonight for Chicago. If I don't hear about this appointment (to be governor of the Virgin Islands), I will give out this press statement and give out the disbarment proceedings when I return to Chicago." The Supreme Court of Illinois held:

> "Malmin's use of the petition and complaint furnished him by Larsen in an attempt, by threat of a public scandal involving the federal administration, to secure an appointment for himself, is clearly established by the evidence and warrants his disbarment."

The Supreme Court of Illinois also held:

> ". . . the above described use of documents, ostensibly prepared for filing in a judicial forum to secure either money or political attention, is not only highly unethical and unprofessional, but it is to be condemned as

> contrary to public morals and decency. Neither inexperience, personal grievance, nor advanced age will excuse such conduct of one member of the Bar against another, nor can it properly be said that activities of this sort are essentially of a private nature, entirely divorced from respondent's official capacities as attorneys at law."

In Sherin, cited supra, he wrote a letter to three other lawyers, threatening to mail to the State Supreme Court a petition for the disbarment of the three addressee lawyers unless they settled and paid a claim for refund of allegedly exorbitant fees charged and collected by them. The Supreme Court of South Dakota held:

> "The sending of this letter plainly comes within the condemnation of the statutes above cited (on extortion), and calls for action by this court under the statutes giving it the power, and imposing upon it the duty, of revoking or suspending of the licenses of attorneys guilty of such offenses."

Appellant's citation of Hager v. Hanover Fire Insurance Company, 64 F. Supp. 949, is not in point. In any event Hager decided that because the Court in which the alleged libelous charge was filed did not have jurisdiction over the action itself, the defense of absolute privilege was not available to the Defendants therein. In the instant case, there can be no doubt that the District Court has jurisdiction over Appellee's complaint against Appellant, so that the crucial basis of Hager is not present here.

Sowder v. Nolan, 125 A.2d 52, cited by Appellant is not in point inasmuch as the letters on which the action was based were not part of judicial proceedings. In the instant case, Appellee's complaint was part of a judicial proceeding, which provides absolute privilege.

Appellant's argument that the language "or referred to" in Local Civil Rule 94(a) "specifically and patently refers to conduct occurring in open Court which the Court would refer to the Committee" is obviously too narrow a concept of the breadth of the scope of the rule itself. No complaint written and addressed to the District Court and

mailed to it, but not addressed to and filed with the Grievance Committee, could reasonably be held invalid under the rule.

Appellee's complaint to the United States Attorney in and for the District of Columbia was absolutely legally privileged and Appellee is immune from legal action for damages therefor. Vogel v. Gruas, 110 U.S. 311, 28 L.ed 158 (which has never been modified); Borg v. Boas, etc., 231 F.2d 788. In view of these federal authorities, the state case of Nelder v. Penetto, 223 N.Y.S.2d, is not controlling.

Appellant's allegations of maliciousness and falsity (which are only his self-serving allegations not supported by the record) do not change the question of law for the Court into a question of fact for a jury.

Young v. Young, 1927, 57 App. D.C. 157, 18 F2d 807, holds:

> "The question whether defamatory matter contained in a pleading is or is not pertinent or relevant to the cause is a question of law for the court, and not of fact for the jury. 'The question of the relevancy or pertinency of matters contained in the pleading, when in issue, is never left to the jury, but is a question of law for the court.' 17 R.C.L. p. 336; Harlow v. Carroll, 6 App. D.C. 128. It follows that a demurrer to a petition for libel does not have the effect of admitting the pleader's allegation that the defamatory matter in question was not relevant or material to the cause in which it was set out. Keely v. Great Northern R. Co., 156 Wis. 181, 145 N.W. 664, L.R.A. 1915C, 986."

See also: Harlow v. Carroll, 6 App. D.C. 120, pp. 139-140; Laughlin v. Garnett, 1943, 78 U.S. App. D.C. 194, 138 F2d 931; Brown v. Shimabukuro et al., 73 App. D.C. 194, 118 F2d 17; Ginsburg v. Black, 7 Cir. 1951, 192 F2d 823, p. 825; Ramstead v. Morgan, 1959, 219 Ore. 383, 347 P2d 594, 77 A.L.R.2d 481; Toft v. Ketchum, 1955, 18 N.J. 280, 113 A2d 671, 52 A.L.R.2d 1208.

In Harlow v. Carroll, 6 App. D.C. 128, at page 137, this Court held:

> "There is another class of privileged communications where the privilege is absolute. They are defined in Hastings v. Lusk, 22 Wend. 410. In this class are included slanderous statements made by parties, counsel or witnesses, in the course of judicial proceedings, and also libelous charges in pleadings, affidavits, or other papers used in the course of the prosecution or defense of an action. In questions falling within the absolute privilege the question of malice has no place. However malicious the intent, or however false the charge may have been, the law, from considerations of public policy, and to secure the unembarrassed and efficient administration of justice, denies to the defamed party any remedy through an action for libel or slander." (Emphasis supplied.)

In the case of Laughlin v. Garnett, et al. 1943, 78 U.S. App. D.C. 194, 138 F2d 931, this Court in affirming decisions made on motions, overruled Appellant's claims, holding that "prosecuting officers are immune from civil liability for conspiracy or malice in carrying out their duties." Thus this Court disposed of allegations similar to those made here as a matter of law, holding that allegations of falsity and maliciousness did not make the case or issue one of fact for the jury. Here Appellee made his complaint to "The United States District Court for the District of Columbia, United States Courthouse, Washington 1, D.C., Attention: The Committee on Admissions and Grievances, Ralph A. Curtin, Esq., Secretary." The District Court's rules made the Committee an agency of the Court and thereby made more definite and secure Appellee's immunity from civil action for damages either for libel or malicious prosecution.

The District Court's Clerk, Harry M. Hull, Esq., as a matter of fact and law, is the principal officer and agent of the Court to receive and file pleadings addressed to the Court. This is law by custom and accepted practice. Appellee's verified complaint (J.A. 9) is a pleading addressed to the District Court. Its Local Civil Rule 94(a) provides that a "complaint shall be filed with, or referred to, the Committee," but does not state who shall or will file the complaint with the Committee. This rule does not attempt to derogate from the duty and function of the

Clerk of the District Court to receive and process or file pleadings addressed to the Court. Neither this rule, nor any other rule, provides that complaints shall be filed only with the Committee.

The filing with or transmittal to the Clerk of the District Court of Appellee's complaint, as decided by the District Court, does not affect, change or remover Appellee's absolute privilege and immunity from civil action. Ramstead v. Morgan, 1959, 219 Oregon 383, 347 P2d 594, 77 A.L.R 2d 481. Prousser v. Faulhaber, 1909, 22 Ohio Cir. Ct. R. N.S., 222. In Ramstead, cited supra., the defendant made complaint by letter and the Court in effect held that such filing was part of a judicial proceeding and absolutely privileged, and said:

> ". . . . . The fact that the charges were filed with the clerk of the court rather than with the judge was regarded as of no importance in determining whether the privilege exists. Prousser v. Faulhaber, 1909, 22 Ohio Cir. Ct. R. N.S., 222."

In Prousser, cited supra, the complaint was held absolutely privileged and the court said:

> ". . . . .He [plaintiff-lawyer] relies mainly upon the fact that the so-called charges were filed, not with any judge, but in the office of the clerk of the Court of common pleas, the publication counted and relied on being to a certain deputy clerk.
>
> "We do not concur in the distinction thus attempted to be made . . . ."

II

THE DISTRICT COURT DID NOT ERR IN DISMISSING COUNT II OF THE COMPLAINT, INASMUCH AS NO PROSECUTION OF APPELLANT RESULTED. THE COURT DID NOT ERR UNDER LAUGHLIN V. GARNETT, 136 F2d 931

By his Count II, Appellant attempted to sue Appellee for malicious prosecution, (J.A. 3). It is plain upon the face of Count II that Appellee's complaint to the District Court and its Grievance Committee, attempting to have the Committee institute disciplinary action against Appellant,

did not result in any prosecution inasmuch as the Committee made no charges. This is clearly shown by Appellant's allegation that "the Committee . . . did not even conduct a hearing, but dismissed the complaint summarily. " (J.A. 3), and by Appellee's affidavit supporting his motion to dismiss, on privilege, setting out and making part thereof Secretary Curtin's letter stating that "the Committee reached the conclusion that it would not be justified in instituting disciplinary action against Mr. Laughlin." (J.A. 17).

Under the District Court's Local Civil Rule 94(e), the Committee after investigation may make charges and submit them to the Court. The Court controls by its Order whether they shall be filed.

Unsuccessful efforts to secure the institution of proceedings are not actionable as malicious prosecution. See Melvin v. Spence, 76 U.S. App. D.C. 154, 156, 130 F2d 423, holding:

> ". . . . The Case [Auerback v. Freeman, 43 App. D.C. 176] therefore is authority for the accepted rule that unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as malicious prosecution. See Harper, Torts (1933) Sec. 268; Prosser, Torts (1941) Sec. 96, at 863-4, and authorities cited . . ."

Auerback v. Freeman, 43 App. D.C. 176, plainly holds that where a complaint by a citizen to an officer of the law has not resulted in charges being filed in court against a person (who becomes Plaintiff in a suit for malicious prosecution) there has been no prosecution, and that an action for malicious prosecution does not lie. Judgment for Plaintiff was reversed.

Toft v. Ketchum, 1955, 18 N.J. 280, 113 A2d 671, 52 A.L.R.2d 1208, holds that no cause of action for malicious prosecution arises from a complaint against a lawyer to a Grievance Committee.

Holmes v. Peters, 46 App. D.C. 260, holds that an action for malicious prosecution does not lie where "Defendant wrote a letter to the judge of the police court, expressing the opinion that plaintiff was

insane," and further holds that "This case is ruled by Auerback v. Freeman, 43 App. D.C. 176." The lower court's action in sustaining a demurrer to plaintiff's declaration was affirmed. By reference to Appellee's complaint to the District Court and its Grievance Committee against conduct of Appellant here (J.A. 9), it will be seen that Appellee was only "expressing his opinion" when he wrote with regard to Appellant as follows: "whom I believe and submit has engaged in improper and unethical conduct, and also in illegal conduct . . ."

III

THE DISTRICT JUDGE ACTED CORRECTLY IN ENTERING AN ORDER STAYING THE DEPOSITION OF THE APPELLEE

Appellee made inquiry of the Motions Clerk before 10:00 A.M. on Tuesday, April 10, 1962, as to where Judge Hart would hold Motions Court. This was pursuant to notice (J.A. 24). The Motions Clerk informed Appellee that Judge Hart would first hold Naturalization Court and would not sit until 11:00 A.M. Appellee went first to Judge Hart's regular courtroom but no one was there, including Appellant. Appellee observed Judge Hart holding Naturalization Court and when he adjourned that Court, Appellee went to Judge Hart's courtroom and awaited him there. Appellant never appeared in Judge Hart's courtroom while Appellee was there. At about 11:00 A.M., Appellee made his application for stay pursuant to his motion and notice, served and filed April 7, 1962, (J.A. 19, 24, 37-39).

Federal Civil Rule 6(b) clearly gave the District Judge the discretion he exercised by his Order staying all depositions of Defendant (J.A. 26), by the words of the rule that "When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed . . ."

The District Court Judge correctly exercised his discretion inasmuch as Appellant's first two notices of deposition were invalid because served without leave of Court within 20 days after commencement of this action in violation of Federal Civil Rule 26(a). Appellant's first notice of deposition was served by mail on March 28, 1962 (J.A. 4-5), and his amended notice of deposition was served by mail on March 30, 1962, both within 20 days after commencement of this action on March 16, 1962.

The Court was further empowered in acting upon Appellee's motion to quash and strike notices of Defendant's deposition by the terms of Rule 30(b). Federal Rules of Civil Procedure, which provides for a protective order for parties and deponents under numerous circumstances. In exercising discretion and granting the request of Appellee to stay the taking of his deposition, the Court had before it ample basis and authorities therefor, as set forth in Appellee's motion to quash and strike notices of deposition (J.A. 19).

It is respectfully submitted that this Court is certainly entitled to note that despite the complaints voiced by Appellant respecting the ex parte proceedings before Judge Hart on April 10, 1962, at which time a stay of the taking of the deposition of Appellee was secured by Appellee and despite the fact that Appellant was served with a copy of the proposed Order on the following morning at 9:25 A.M., which was thereafter signed by Judge Hart, the Appellant, took no steps whatsoever to effectuate a change in the Order or to modify the same in any fashion. Appellant should have easily filed a motion for reconsideration of the terms of the Order or sought a hearing before Judge Hart respecting the provisions of the Order. Instead, Appellant took no steps whatsoever in this direction. The argument before the Court on Appellee's motion to dismiss was not reached until May 31, 1962, nearly a month and a half after the date of the proceedings as to which Appellant voices complaint in his brief. Can Appellant be heard

on this point in view of his own inactivity as described above? In this posture, it is submitted, the Court should readily conclude that the granting of Appellee's motion to stay the taking of his deposition was clearly within the discretion of the Court and as such, not subject to review.

The District Court acted correctly and within its discretion when staying the deposition of Appellee.

CONCLUSION

The Appellee respectfully submits that on the basis of the authorities set forth herein, it is apparent that the dismissal of Counts I and II of the Complaint brought by Appellant in the District Court was in accordance with law as each of the matters complained of and attributed to Appellee were under an absolute privilege and resultant immunity from a civil action for damages.

The exercise of discretion by the Court in staying the taking of the deposition of the Appellee under all the circumstances was in accordance with the rules of procedure and fully within the discretionary powers of the Court. No abuse of discretion has been claimed or shown.

WHEREFORE, Appellee respectfully requests that this Court affirm the Order of dismissal with prejudice of this action.

Respectfully submitted,

/s/ WILLIAM E. STEWART, JR.

/s/ RICHARD W. GALIHER

/s/ JULIAN H. REIS
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